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सं. 11] नई दिल्ली, मार्च 6—मार्च 12, 2016, शनिवार/फाल्गुन 16—फाल्गुन 22, 1937
No. 11] NEW DELHI, MARCH 6—MARCH 12, 2016, SATURDAY/PHALGUNA 16—PHALGUNA 22, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 24 फरवरी, 2016

का.आ. 435.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, रिक्याविक में श्री हिमांशु तूर, निजी सहायक को दिनांक 24 फरवरी, 2016 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2016]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 24th February, 2016

S.O. 435.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Himanshu Toor, PA as Assistant Consular Officer in the Embassy of India, Reykjavik to perform the Consular services with effect from 24th February, 2016.

[No. T-4330/01/2016]

PRAKASH CHAND, Dy. Secy. (Consular)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 29 फरवरी, 2016

का.आ. 436.—बीमांकक अधिनियम, 2006 (2006 का 35) की धारा 12 की उप-धारा (2) के खण्ड (ख) (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री आलोक टंडन, संयुक्त सचिव, वित्तीय सेवाएं विभाग को वित्त मंत्रालय का प्रतिनिधित्व करने के लिए श्री अनूप वधावन के स्थान पर, अगले आदेश होने तक, भारतीय बीमांकक संस्थान परिषद में सदस्य के रूप में नामित करती है।

[फा. सं. एम-18013/01/2011-बीमा-I]

एस. के. मोहंती, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 29th February, 2016

S.O. 436.—In exercise of the powers conferred by clause (b)(i) of sub-section (2) of Section 12 of the Actuaries Act, 2006 (35 of 2006), the Central Government hereby nominates Sh. Alok Tandon, Joint Secretary, Department of Financial Services, Ministry of Finance as a member of the Council of the Institute of Actuaries of India to represent the Ministry of Finance till further orders vice Shri Anup Wadhwan.

[F. No. M-18013/01/2011-Ins. I]

S. K. MOHANTY, Under Secy.

नई दिल्ली, 4 मार्च, 2016

का.आ. 437.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा एग्रीकल्चर इंश्योरेंस कंपनी ऑफ इंडिया लिमिटेड (एआईसीआईएल) के अध्यक्ष एवं प्रबंध निदेशक श्री जोसेफ पलाप्पल्लिल जे., को पद भार ग्रहण करने की तारीख से 5 वर्ष की अवधि के लिए अथवा उनके 62 वर्ष की आयु प्राप्त कर लेने तक अथवा अगले आदेशों तक, जो भी पहले हो, आवास एवं कार की सुविधा के बिना 3.75 लाख रुपये प्रतिमाह के समेकित वेतन पैकेज में भारतीय बीमा विनियामक और विकास प्राधिकरण (इरडाई) में पूर्णकालिक सदस्य (गैर-जीवन) नियुक्त करती है।

[फा. सं. आर-16011/01/2014-बीमा-I]

एस. के. मोहंती, अवर सचिव

New Delhi, the 4th March, 2016

S.O. 437.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government

hereby appoints Shri Joseph Plappallil J, Chairman-cum-Managing Director, Agriculture Insurance Company of India Limited (AICIL) as Whole-Time Member (Non-Life) in the Insurance Regulatory and Development Authority of India (IRDAI) in the consolidated pay package of Rs. 3.75 lakh per month, without facility of house and car, for a period of five years with effect from the date of assumption of charge of the post or till he attains the age of 62 years or until further orders, whichever is the earliest.

[F. No. R-16011/01/2014-Ins. I]

S. K. MOHANTY, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 8 मार्च, 2016

का.आ. 438.—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में नीचे दी गई अनुसूची के स्तम्भ (1) में उल्लिखित व्यक्ति को उक्त अनुसूची के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र की बाबत, का.आ. 756, तारीख 16 फरवरी, 2012 तथा भारत सरकार के राजपत्र तारीख 25 फरवरी, 2012 द्वारा संशोधित में निम्नलिखित रूप से संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में शब्द “एस.एम. सैयद, डिप्टी कलेक्टर, गुजरात स्टेट पेट्रोनेट लिमिटेड, 5वीं मंजिल, जीएसपीसी भवन, गांधीनगर -382010” के स्थान पर “एस.एम. सैयद, अतिरिक्त कलेक्टर, सक्षम प्राधिकारी, जीएसपीएल इन्डिया गेसनेट लिमिटेड, मेहसाणा- भटिण्डा प्राकृतिक गैस पाइपलाइन नेटवर्क, जीएसपीएल भवन, ई-18 जीआईडीसी ईलेक्ट्रोनीक्स एस्टेट, के-7 सर्किल के पास सेक्टर-26 गांधीनगर - 382028” (गुजरात) शब्द पढ़े जायें।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. एल-14014/39/2011-जी.पी.-II]

श्री प्रकाश अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 8th March, 2016

S.O. 438.—In pursuance of the Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Rights of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas Vide No. S.O. 756 dated 16.02.2012 published in the Gazette of India dated 25.02.2012; namely :

In the said notification for the words “Shri S. M. Saiyed, Dy. Collector, GUJARAT STATE PETRONET LIMITED, 5th floor, GSPC Bhavan, Gandhinagar - 382010”, the words “Shri S.M. Saiyed, Additional Collector and

Competent Authority, GSPL INDIA GASNET LIMITED, Mehsana—Bhatinda Natural Gas Pipeline Network, GSPL Bhavan, Plot No. E-18, GIDC Electronic Estate, Sector-26, Gandhinagar, Gujarat – 382028” shall be substituted.

This notification will be effective from the date of its issue.

[F.No.L-14014/39/2011-GP-II]

S. P. AGARWAL, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 फरवरी, 2016

का.आ. 439.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ सं. 76/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/02/2016 को प्राप्त हुआ था।

[सं. एल-40012/140/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th February, 2016

S.O. 439.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. 76/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02/02/2016.

[No.L-40012/140/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT:

Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1)(d) of the I.D. Act, 1947

REFERENCE NO. 76 OF 2013

PARTIES : Sri Gaya Paswan
S/o Shri Shukla Paswan,
R/o Mohalla -Kistipur, PO : Sahandha
PS- Dhanrawa, Patna

Vs.

The Chief General Manager
Bharat Sanchar Nigam Ltd., Patna
Patna Telecom Circle, Patna (Bihar)

Order No. L-40012/140/2012-IR(DU)
dt. 18.03.2013

APPEARANCES:

On behalf of the workman/Union : None

On behalf of the Management : None

State :Bihar Industry : Telcom

Dated Dhanbad, the 21st Dec., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-40012/140/2012-IR (DU) dt. 18.03.2013.

SCHEDULE

Whether the action of the Management of Bharat Sanchar Nigam Ltd., Patna in terminating the services of Shri Gaya Paswan S/o Shri Shukla Paswan is legal and justified? To what relief the workman concerned is entitled to ?

2. None either from workman concerned nor the Management or its Representative reported for presence nor did file the W.S. by the workman despite issuing altogether three Regd. Notices on dt. 21.08.2014, 9.5.2014 and the last one on 29.04.2013 on the address of the workman referred in the Order of Reference itself. Though one remained “Undelivered” with no specific remarks contrary to it, Mr. Sushil Pd. Ld. Advocate represented the case all alone but not was present on the date. The Schedule is relating to termination of services by the Bharat Sanchar Nigam Ltd., Patna Circle, challenging its legality and justification seeking reliefs under it by the workman.

From the perusal and emphatically scrutiny of the case record, it appears the workman all along remained absent since its inception and proved failure even in submission of WS despite providing ample opportunities reflected through Note sheets of the record. It shows the conduct and manner, the workman walks, and the Tribunal will be unfair to set the case record for rolling for uncertainty, rather push for closure immediately due to reluctance of the workman concerned as the workman in no way has showed seriousness for adjudication. Under such circumstances, the case is dosed; and accordingly an Award of ‘No Dispute Award’ is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 फरवरी, 2016

का.आ. 440.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 06/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/02/2016 को प्राप्त हुआ था।

[सं. एल-42012/6/2002-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th February, 2016

S.O. 440.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 29/02/2016.

[No. L-42012/6/2002-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT:

RAKESH KUMAR, Presiding Officer

I.D. No. 06/2005

Ref. No. L-42012/6/2002-IR (C-II) dated 13.01.2005

BETWEEN:

Sri Dinesh Chandra S/o Sh. Gitam Singh
C/o Sh. Surender Singh, Advocate
43/16 S./15 A Sector-16, Sikandera, Agra
AGRA (U.P.)

AND

1. The Supdt. Archaeologist
Archaeological Survey of India
Agra Division, 22, Mall Road
Agra (UP.) 282001

AWARD

1. By Order No. L-42012/6/2002-IR(C-II) dated 13.01.2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Dinesh Chandra S/o Sri Gitam Singh, Agra and the Supdt. Archaeologist, Archaeological Survey of India, Agra for adjudication.

2 The reference under adjudication is:

“Whether the action of the management of Archaeological Survey of India in terminating the services of Sri Dinesh Chandra w.e.f. 18.10.2000 is legal and justified? If not, to what relief the workman is entitled?”

3. The workman has filed claim statement A1-3, wherein it has been stated in brief that he had been working under the management of opposite party continuously for the last 10 years, got temporary status in service, was getting wages regularly amounting to Rs. 4400/- per month, but without issuing any charge sheet and without conducting any domestic enquiry he was illegally terminated on 18.10.2000. The applicant has stated that he was employed as Beldar (Masson Attendant), 100 of workmen have been working under the management, several persons junior to the applicant are still working, the father of the applicant Sri Geetam Singh was also a permanent employee as Monument Attendant, he was an office bearer of the union, submitting the problems of the workmen from time to time and also bringing to light the mal-practices of the department before the competent authorities, and consequently the opposite party felt hurt and the management terminated the services of the father and brother of the applicant and applicant himself was illegally terminated, wages have not been paid to his father w.e.f. August 2000, all the 3 major members of the family are thrown out of employment.

4. The applicant has alleged that the Sri Munajjar Ali, Conservation Assistant has threatened the father of the applicant and abused him, and in revenge the applicant was terminated vide letter dated 18.09.2000.

5. It is further stated that the services of the applicant have been terminated under the signature of the Supdt. Archaeologist Sri Dharam Veer Sharma without following the principles of natural justice. The applicant has been terminated from the services by the notice in which the false and baseless charges were levelled against him. The applicant was not heard genuinely in spite of this illegal process and he was not given sufficient opportunity to defend his case. At the time of termination of the services of the applicant, neither retrenchment compensation was paid nor was any other service benefits given. He was not paid his earned wages for the last two months and even he was not paid his bonus due. On 19.10.2000 he was forced to sign on the pay sheet as such he did but till date earned wages have not been paid to him in spite of his repeated requests. The applicant being old and senior workman, had also requested the management so many times to regularize him in service on vacant posts of monument attendant in group ‘D’ category which are lying vacant for the last few years in the circle, because the applicant is working since the last ten years continuously without any break. This is also one of the causes to terminate his services as when there is no fiddle there will be no voice.

6. With the above pleadings the workman has requested to reinstate him with full back wages and for payment of bonus along with interest etc.

7. Several documents and rulings of the court have been annexed with the claim statement.

8. The management has filed written statement A2/13 wherein allegations levelled in the claim statement have been denied. The opposite party has stated that Archaeological Survey of India is a sovereign department under the Department of Culture of the Govt of India, it is not an industry, the provision of I.D. Act., does not apply. The monuments and sites are not only archaeological wealth of the country but also sentinels of national heritage and for these purpose departments engage casual labourers for specific job and for specific duration. The personnel working under the department are governed by CCS(Conduct) Rules and the department is neither a industry nor it undertakes any kind of industrial work, it is not manufacturing unit. The management has stressed that Under Secretary, Ministry of Culture had written a letter to Ministry of Labour informing him that the department is not a industry, the CGIT-cum-Labour Court, Ahmedabad has also observed that the opposite party department is not a industry. The Ministry of Labour had earlier refused to refer this matter to CGIT-cum-Labour Court for adjudication on the grounds that the OA is filed by the workman in Hon'ble CAT, Allahabad for similar relief, but the same was dismissed subsequently the matter was referred to this court without seeking the comments of the opposite party thereby violating the principle of natural justice.

9. It is further stated that the applicant was granted temporary status in the year 1993 under the Grant of temporary status and regularization scheme of 1993. Thereafter, he was working as Mason Attendant at different monuments of Sikandara sub-circle of Agra Circle of the ASI. During this period he was involved in various kinds of nefarious activities against the department. He neither maintained office discipline nor he obeyed the instructions of his superior officials. He was the most disobedient person in the Sikandara sub-circle of this circle. Besides Sri Dinesh Chand had also prepared duplicate keys of the dak bungalow gate of the Sikandara Monuments for ulterior motives and helped in making unauthorized entry of antisocial elements through this gate at odd hours. He has not handed over the duplicate keys till date to the Officer in charge of Sikandara sub circle even after repeated instructions. Subsequently, the applicant was posted at Firoz Khan's Tomb to perform his duty there but during surprise checks by the officer incharge of Sikandara sub circle he was found absconding from his duty and was found loitering in the Sikandara tomb for illegally extorting money from the tourists and for cheating the public. He often extracted money from the tourists fraudulently. Besides these, Sri Dinesh Chand and his brother Suresh Chand, ex-temporary status workers of Sikandara sub-circle

also illegally occupied two chowkidar quarters inside the Sikandara Tomb premises since more than a decade. The applicant was also misusing electricity and water facilities in the premises of the Govt. accommodation and was not paying any house rent, electricity and water charges to the Department although they were getting house rent and other allowances regularly. In addition, he alongwith his brother was keeping cattle with them inside the Govt. accommodation illegally occupied by them and thus they were not only creating nuisance but also making the monument dirty and destroying the Archaeological garden of Akbar's tomb, Sikandara, which is a transparent violation of Ancient Monuments and Archaeological Sites and Remains Act. 1958, in this regard. The officer in-charge of Sikandara sub-circle had issued several warnings but he did not bother for the same or did not bother to reply the office memoranda properly. He had also gone to the extent of threatening his superior officers of dire consequences. Besides these, the applicant was also involved in the theft of Govt. article from inside the monument complex. On 31.08.2000, he had stolen a Sintex Water tank from the Sikandara monument in the connivance of his brother Sri Suresh Chand. In this regard, a complaint against the applicant and his brother was lodged by this office at the police station Sikandara, Agra. In addition to these, the applicant was also sitting on illegal dharna organized from 16.10.2000 to June 2001 by an unauthorized union leader, Sri Surendra Singh, against whom two criminal petitions are pending before the Hon'ble High Court of Allahabad and was creating nuisance in front of the office of the opposite party. Thus the past record of the applicant clearly reveals dereliction of duties, disobedience and involvement in various kinds of nefarious activities and extending threats to officers on govt duty. Keeping in view the above, the Supdt. Archaeologist/employer was left with no other option but to initiate strict disciplinary action against him and therefore the Supdt. Archaeologist/employer, in exercise of powers conferred upon by section 7 of 'Casual Labourers: Grant of Temporary Status and Regularization Scheme of 1993, issued a notice on 18.09.2000 with one month's notice and notice pay as per rule. The charges levelled against him in the notice dated 18.09.2000 were based on facts explained in the foregoing paragraphs. The manners and behaviour of the petitioner was highly disobedient, criminal and unbecoming of a Govt. Servant. If any attendant or a temporary status casual worker such as the applicant shy away from discharging his duties and disobeying the authorities of his supervisory officials such as the respondent, it would definitely defeat the very purpose of engaging an attendant/monument attendant/temporary status casual worker like the applicant, in govt. service for safeguarding centrally protected monuments of national importance.

10. It is further stated that the allegations levelled are false, fictitious and baseless and hence denied. Since the services of the applicant had been lawfully terminated on

various charges, it is irrelevant whether any other person is working or not. It is stated that the charges are false, fictitious and fabricated and hence denied. The applicant has been trying to draw the indulgence of this Hon'ble Tribunal to gain sympathy only. The service of the father of the applicant, Sri Geetam Singh was terminated for similar offence. Sri Geetam Singh had also filed a case before the Central Administrative Tribunal, Allahabad and the Hon'ble court was pleased to issue directions to the respondents to consider the appeal and dispose it off through a detailed and reasoned order. Accordingly, he has been issued with a reasoned and speaking order. The service of the brother of the applicant Sri Suresh Chand was also terminated for similar offence. However, it is pertinent to mention that the applicant is purposefully trying to bring in the names of Sri Geetam Singh and Sri Suresh Chand to draw the sympathy of this tribunal. It is stated that the charges are false, fictitious and fabricated and hence denied. It is true that the services of the applicant was terminated under the signature of Sri Dharamvir Sharma, the then Supdt. Archaeologist but it is false to allege that principles of natural justice were not followed. The officer in-charge of Sikandara Sub-circle, where he had been working has issued him several warnings and memoranda so as to give him chances to improve his conduct and manners but he failed to avail the opportunity. It is stated that all the charges levelled against him were just and proper. But he failed either to improve himself or to furnish suitable reply to warnings or to act in a manner benefiting of a temporary status casual worker. And hence his services were terminated. It is also submitted that the employer reserves the right to prove the charges on merit before tribunal.

11. It is stated that section 7 of "Casual Labourers: Grant of Temporary Status and Regularization Scheme of 1993", confers the power upon the employer to terminate the services of temporary status casual labourer with one months notice and notice pay. Accordingly, the applicant was given a month's notice and notice pay, which he refused to accept in front of witnesses. As he failed to improve his conduct or to mend his manners and prove to be a befitting worker so his services were terminated after the end of one month's period. On the contrary, it is stated that he had signed the pay sheet on 19.10.2000 in support of receipt of his earned wages. Signatures are normally taken from the individual after he receives an amount. So the existence of his signature on the pay sheet justifies his receipt of the earned wages. If he has any proof to the contrary, he may be put to strict proof thereof. The applicant was one of the most irresponsible and uncouth workers. He had been given so many opportunities to improve his manners and behave in a manner befitting to a temporary status worker but he himself had failed to utilize the opportunities accorded to him by the opposite party but instead remained laconic towards his irresponsible acts thinking that in the garb of threat no one could do anything to him. In order to escape from the charges levelled against him, the applicant is now

trying to give a different colour to the case by twisting the facts; It is pointed out that the charges framed in the termination notice dated 18.09.2000 were based on facts as explained in the foregoing paragraphs. The disciplinary action taken by the department against the petitioner is entirely based on his misconduct, disobedience and his illegal activities against the department.

12. The opposite party has asserted that the workman during his service did not behave properly, he did not prove himself to be worthy of the organization, he was found to be undesirable by the department, therefore he could not be given employment, the opposite party had lost confidence in him, very serious and gross charges were found against the workman. The opposite party has stated that his pending dues have been paid to the workman through the CGIT-cum-Labour Court, Kanpur. The management has prayed to dismiss the claim statement.

13. The workman has filed rejoinder with the strong denial of the facts mentioned in the written statement while reiterating the pleas taken in the claim statement. The workman has also emphasized that the order passed in the LCA, by the CGIT, Kanpur does not adversely affect the right of the workman in the present case. The workman has also stressed that the award adjudicated by CGIT, Kanpur in I.D. 122/91 had not been filed by the management. Alongwith rejoinder the workman has filed the copy of the statement of Sri Munajjar Ali, Conservation Assistant recorded in I.D no. 39/03.

14. The workman Sri Dinesh Chandra has filed affidavit in evidence, he was duly cross examined on behalf of the management. The management examined Sri Munajjar Ali, Conservation Assistant in its evidence, and he was also thoroughly cross examined on behalf of the workman. Other witness Sri Amar Singh, Sunhari Lal, Tejpal and Sri Bal Kishan were examined by the management and they were cross examined on behalf of the workman.

15. Heard authorized representatives of the parties at length and perused the records available on file.

16. The authorized representative of the workman has come up with a case that the workman who attained temporary status and extended all the benefit admissible to the temporary employees of the opposite party; but his services have been terminated by the management of the opposite party without issuing any charge sheet or conducting a formal domestic/departmental inquiry against the workman, in sheer violation of the principles of natural justice. The authorized representative of the workman has also contended that the management has not only failed to observe norms of natural justice within their department but also failed to prove the allegations leveled against the workman while illegally terminating his services w.e.f. 18.10.2000. The workman's representative has categorically contended that the opposite party very well falls within the definition of the industry as it is indulge in commercial

activities as provided in the 'triple test' provided by Hon'ble Apex Court in Bangalore Water Supply case. The workman has relied upon:

- (i) Bangalore Water Supply & Sewerage Board vs A. Rajappa & others 1978 LLJ 349.
- (ii) H.S. Chandra Shekara Chari vs Divisional Controller, KSRTC & another 1999 SCC (L&S) 898.
- (iii) Hari Ram Maurya vs Union of India & others 2006 SCC (L&S) 1677.
- (iv) Union of India & others vs Mahaveer C. Singhvi (2010) 2 (L&S) 602.
- (v) Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Privahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.
- (vi) Bhuvnesh Kumar Dwivedi vs M/s. Hindalco Industries Ltd. 2014 AIR SCW 3157.
- (vii) M/s. U.P. Motor Transporters Association vs Labour Court IV, Kanpur & another 2003 (99) FLR 975.
- (viii) Sriram Industrial Enterprises Ltd. Vs Mahak Singh & others (2007) 1 SCC (L&S) 961.
- (ix) Order of Hon'ble Apex Court in Civil Appeal No. 2280 of 2000, Nar Singh Pal vs Union of India & others.

17. In rebuttal, the authorized representative of the management has argued that the department of ASI is not covered within the definition of 'industry' as provided in the Industrial Disputes Act, 1947 and the personnel working in the ASI are governed by CCS (Conduct) Rules, therefore, there was no need of issuing any charge sheet or conducting any regular inquiry against the workman as per provisions of T.S. Rules, 1993. The learned representative of the management has asserted that the management tried its best to deliver the notice pay and other dues consequent to termination of his services to the workman but he refused to accept the same; but later on in LCA case No. 52/2001 before CGIT-cum-Labour Court, Kanpur accepted the same in Lok Adalat; thus, when the workman has accepted the notice pay then the workman cannot agitate the same before this Tribunal that he was illegally terminated by the management.

However, the authorized representative has discarded the argument of the authorized representative of the management with submission that he never participated in any Lok Adalat. He has further asserted that the workman was neither paid any amount nor he received any amount in pursuance to the order of the CGIT-cum-Labour Court, Kanpur in the alleged Lok Adalat. The authorized representative of the management has also submitted that the case laws relied upon by the workman are not applicable with respect to facts of the present case.

18. I have given my thoughtful consideration to the rival contentions of the parties and scanned entire evidence on record in light thereto.

19. At the outset of the case the management of the ASI has taken preliminary objection that it does not fall within the purview of the definition of industry as provided in the Section 2 (j) of the Act. The parties have argued vehemently in their respective stands. Hence, after going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others case; wherein it has been observed that

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors; thus, a handsome amount is being collected every year, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case.

Also, the authorized representative of the management has pointed out that an effort had been made to settle the dues of the workman through Lok Adalat before CGIT-cum-Labour Court, Kanpur; although the fact of any settlement is denied by the workman; but how can the management assail on two boats i.e. contending that it is not an industry before this Tribunal and entering into settlement with the same workman before CGIT-cum-Labour Court, Kanpur. Why the management of ASI did not take the same plea there that the LCA case was not maintainable

before CGIT-cum-Labour Court, Kanpur as ASI is not an 'industry'. This shows opportunism on the part of the management; hence it is also prevented by the rule of estoppel; and now it is not open for the ASI to plead that it is not an industry once contested the case before CGIT-cum-Labour Court, Kanpur and participated in Lok Adalat there.

Thus, in view of facts and circumstances of the case, discussion made hereinabove; and above legal prepositions, I am of the considered opinion that ASI is not discharging sovereign function and is at par with the CPWD, PWD and other municipalities/upkeep agencies, which are well covered under Industrial Dispute; and accordingly, come to the conclusion that the opposite party i.e. Archeological Survey of India is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

20. Now coming to the merits of the case, it is admitted case of the parties that the workman has initially been engaged as casual labourer and was granted temporary status in the year 1993 under the Grant of Temporary Status and Regularization Scheme of 1993 and his services have been terminated vide impugned order dated 17.10.2000 and no charge sheet was issued or any departmental inquiry was not conducted for alleged misconduct of the workman. Admittedly, the management of the ASI has issued notice dated 11.09.2000, paper No. 13/28, to the workman, which was notice-cum-termination letter, containing following allegations:

- “1. यह कि आपके द्वारा अपने निर्देशित स्थल पर कार्य नहीं किया गया वरन आप सिकंदरा में पर्यटकों को गाइड करना व लंगूरबाजी करना आदि अवैध कार्यों में लिप्त पाए गए जिससे पर्यटकों के समक्ष विभाग की छवि धूमिल हुई ।
2. यह कि जब आपको कार्य के लिए आदेशित किया गया आपके द्वारा अपने अधिकारियों को धमकी भरे स्वर में मना किया गया जो कि अनुशासनहीनता का धोतक है ।
3. यह कि आपने न तो स्वयं सरकारी कार्य के प्रति रुचि दिखाई वरन अन्य साथी कर्मचारियों को भी काम न करने के लिए विभाग के विरुद्ध प्रेरित किया जिससे अव्यवस्था का माहौल उत्पन्न हुआ ।
4. यह कि आपके द्वारा बिना पूर्व सूचना के अपने कार्य से अनुपस्थित दर्शाई गई जिससे सरकारी कार्य में बाधा उत्पन्न हुई ।
5. यह कि आपके द्वारा सरकारी आवास का उपयोग किया गया जिसके लिए आप योग्य न थे एवं कई ज्ञापनों के उपरांत आपके द्वारा सरकारी आवास तो खाली किया गया मगर वर्तमान में भी आप अपना निवास स्मारक परिसर में ही बनाए हुए हैं जो अतिक्रमण की श्रेणी में आता है ।

6. यह कि आपके द्वारा डाक बंगले गेट की दोहरी, तिहरी चाबियां बनवाई गई जिन्हें संरक्षण सहायक के मांगने पर भी जमा नहीं किया एवं समय असमय उस दरवाजे असामाजिक तत्वों का आवागमन कराया गया ।
7. यह कि आपके द्वारा सरकारी आवास में रहते हुए अतिरिक्त बिजली व पानी का उपभोग किया गया जिसका भुगतान सरकार को नहीं किया गया ।
8. यह कि वर्तमान में भी आपके द्वारा सिकन्दरा स्मारक परिसर में अवैध तरीके से बिजली व पानी का उपयोग निरंतर जारी है ।
9. यह कि आपके द्वारा सरकारी आवासों के मरम्मत कार्य में भी व्यवधान डाला गया ।
10. यह कि आपके द्वारा स्मारक बंद होने के पश्चात् नशे में अपने अधिकारियों के प्रति असंवैधानिक शब्दों का प्रयोग किया गया जिससे रात्रि ड्यूटी वाले कर्मचारियों के लिए समस्या उत्पन्न हुई ।
11. यह कि आपके द्वारा अपने पिता के संरक्षण में नेतागर्दी व प्रेस में विभाग व अधिकारियों के विरुद्ध झूठे समाचार देने जैसे विभाग विरोधी कार्य किए गए ।
12. यह कि आपकी अवैध गतिविधियों के लिए जब आपको ज्ञापन दिए गए तो आपके द्वारा उनके उत्तर नहीं दिए गए ।”

In pursuance to above notice dated 11.09.2000, the management of the ASI terminated the services of the workman w.e.f. 18.10.2000. The efforts of the management regarding payment of notice pay etc. to the workman could not fructified due to non-receipt of cheque, bearing payment, by the workman.

21. Hon'ble Apex Court in Hari Ram Maurya vs Union of India & others 2006 SCC (L&S) 1677 has observed that it is mandatory to hold an inquiry when the termination of services are punitive. Hon'ble Court held that even though the appellant is a temporary employee, his services cannot be terminated on charge of bribery without holding an inquiry and thereafter acting in accordance with law.

22. In 2008 (116) SCC FLR 357, while considering the question pertaining to circumstances when permission can be granted to an employer to lead evidence to justify its order of termination, Hon'ble Apex Court has observed that wrong permission granted to lead evidence and absence of acceptable evidence are conceptually different. Hon'ble Apex Court has also observed that where an employer failed to make an inquiry before dismissing or discharging a workman, it is open to him justify the action before the Tribunal by leading all relevant evidence before it and Tribunal is empowered to consider the evidence placed

before it for the first time in justification of the action taken only, if no inquiry has been held or after the inquiry conduct by an employer is found to be defective.

In *Neeta Kaplish vs. Presiding Office, Laour Court & another* 1999 SCC (L&S) 302 Hon'ble Apex Court dealing with the matter under section 11 A of the I.D. Act has held:

"In all cases where enquiry has been found to be defective, Tribunal can call upon the management or the employer to justify action taken against the workman & to show by fresh evidence that the termination or dismissal was proper. If management does not lead any evidence by availing of this opportunity, it cannot raised any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If however, opportunity is availed of and evidence is adduced by the management, validity of action taken by it has to be scrutinized and adjudicate on the basis of such fresh evidence."

23. It is the case of the parties that the management of ASI did not issue any formal charge sheet to the workman or did not conduct any departmental inquiry where the delinquent employee was afforded opportunity to defend himself. The management of the ASI moved an application C-23 seeking opportunity to proved the charges leveled against the workman before this Tribunal, relying upon 2001 (90) FLR (SC) 35, therefore, it was oblivion of this Court to call upon the management of the ASI to justify its action by proving the alleged charges before this Tribunal, in view of the principle laid down by Hon'ble Apex Court in *Neeta Kaplish* case (supra); and accordingly the request of the management was allowed vide order dated 15.02.2006 after hearing the parties; whereby the management of the ASI was called upon to file list of documents and witnesses in support of charges.

24. The workman has examined himself and he denied the charges leveled against him in his cross examination; and stated that Sri Munazzar Ali had enmity with him, which resulted into leveling of baseless and false allegations against him.

In rebuttal, the management filed list of documents C-25 and list of witnesses, C-36, which included names of Sri Amar Singh, Bal Kishan, Gajendera Singh, Tej Pal and Sunhari Lal. However the management examined Sri Munazzar Ali, Conservation Assistant, Sri Amar Singh, Sunhari Lal, Tej Pal and Bal Kishan in support of charges. The management witness, Sri Munazzar Ali stated in his statement on oath that the services of the workman was satisfactory at all and he was indulged in various nefarious activities such as:

(i) Langoorbazi.

- (ii) Work as tourist guide during official working hours.
- (iii) Unauthorized possession of staff quarter.
- (iv) Keeping cattle in monument's premises.
- (v) Theft of water tank for which FIR was lodged.
- (vi) During inspection the workman was found absent.

He has also referred to paper No. 25/2, report SHO, Police Station, Sikandara dated 16.9.2000, paper No. 25/3, report before SA, Agra, dated 11.9.2000 regarding encroachment by Gitam Singh, paper No.25/4, Office Memorandum dated 25.9.2000 to remove encroachment by Gitam Singh, paper No. 25/5, report dated 26.9.2000 to SSP, Agra remove encroachment by Gitam Singh, paper No. 25/6, note dated 29.9.2000 declaring vacation of the monument premises by Gitam Singh, paper No. 25/7, report dated 26.9.2000 before SSP, Agra regarding prevalence of anarchy in Akbar's Tomb, paper No. 25/8, notice of encroachment dated 24.8.2000 addressed to Gitam Singh, paper No. 25/9, report dated 29.9.2000 to SHO, Sikandara, Agra.

The opposite party has also examined Sri Amar Singh, Sunhari Lal, Tej Pal and Bal Kishan; whose evidence is mainly regarding non-receipt of notice pay etc. by the workman. However, Sri Amar Singh stated that he has worked with the workman at Sikandara. He also stated that the workman was indulged in langoorbazi and was reluctant about his duties; but in cross-examination he stated that he is not aware of fact that as to whether any tourist gave him money for langoorbazi or not. Witness, Sunhari Lal did not support the version of Munazzar Ali and stated nothing about charges leveled against the workman. On the contrary one of the witnesses, viz. Tej Pal stated that the workman used to leave after completing his duties. Another witness, Bal Kishan stated in his cross-examination that he is not certain as to who used to tame animals. He stated that he has seen goat but cannot say it was tamed by the workman or his father. Thus, the statement of Sri Munazzar Ali remains unsupported with the evidence of other witness as regards alleged misconduct of unauthorized occupancy, working as guide, keeping cattle in monument premises, theft of water tank and reluctance to his work.

25. The management witness, Sri Munazzar Ali in his evidence has stated that the workman was indulged in various nefarious activities, such as Langoorbagi, working as guide, keeping cattle and unauthorized possession of staff quarter; but from perusal of the documentary relied upon by the management it comes out that the name of the workman, Dinesh finds its reference on in report dated 16.9.2000, paper No. 25/2 and thereafter none of the document have any mention of the name of the workman, particularly there is no mention of name of the workman in evacuation memo dated 29.09.2000, paper No. 25/6, when

the unauthorized possession was got evacuated in presence of ASI officers and officials. This makes the allegation leveled by the witness baseless and vague. The witness, Sri Munazzar Ali has not specifically stated that when and where the workman was found indulged in working as tourist guide or who saw him performing such act or who were the complainants to him regarding such activity of the workman. Further, the management witness failed to clarify what he actually means from 'Langoorbazi' or what pecuniary benefit or otherwise the workman received by doing such Langoorbazi, amounting to misconduct on the part of the workman. As regards illegal or unauthorised occupancy of the staff quarter by the workman or keeping cattle in the monument premises, the management witness again failed to establish this fact by not stating as which staff quarter with what number or what location was occupied by the workman; more over the paper No. 25/6 totally goes contrary to the statement of management witness, which shows that actually the staff quarter was occupied by Gitam Singh, which was got evacuated by the ASI officials on 29.09.2000 when he was expelled out along with his family, belongings and cattle. There is no mention of the name of the workman in the memo dated 29.9.2000 nor there is any evidence to the effect that the workman was part of his family and was residing with his father in the same quarter; hence, it is ethically wrong to blame the workman for unauthorized occupancy of staff quarter. The management witnesses has stated that the workman as found absent from his duty point; but could not corroborate the same with documentary evidence. Also, he could not produce and inspection memo or any show cause memo issued to the workman for his unauthorized absence from the duty place. As regards theft of water tank, there is no documentary evidence, apart from oral evidence of the management witness, to show that what was the fate of the FIR logged for the alleged theft of water tank. Whether any charge sheet after due investigation was filed by the police against the workman. Mere send a report to the SHO does not established the allegation that the workman was guilty of theft of water tank.

26. Thus, in conclusion, the management of the ASI utterly failed to prove the charges levelled before this Tribunal vide notice dated 11.09.2000. The allegations of misconduct, levelled upon the workman, are not specific and except allegation pertaining to absence at the time of inspection, all are quite vague and ambiguous. No documentary evidence has been relied upon to prove the only specific allegation by the management. The is lack of consistency in the evidence of the witnesses produced by the management on material point and memos given to the workman and allegations made in the notice dated 11.09.2000, which formed basis of his impugned termination order. Accordingly, on the basis of evidence adduced by the opposite party, ASI no case of alleged misconduct could

be said to have been made out against the workman, Dinesh Chand.

27. The impugned order dated 17.10.2000, paper NO. 13/29, termination the services of the workman, reads as under:

"In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, D. V. Sharma, Superintending Archaeologist hereby give notice to Shri Dinesh Chand, Daily Wager Temporary Status that his services shall stand terminated with effect from 19.10.2000 (Forenoon) one month salary is being paid."

A bare perusal of the above order reveals that the said order had been passed under sub rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965; but the said Rule is not application in case of workman. As already discussed that the management has taken a preliminary objection in its written statement that it is not an 'industry'; but in the same written statement, vide Para 6, it has stated that the notice dated 11.09.2000 had been issued in exercise of powers conferred under Section 7 of 'Casual Labourers Grant of Temporary Status and Regularization Scheme' of 1993; thus again, it impliedly shows that the ASI is an industry and the action of the management in terminating the services of the workman vide impugned order dated 17.10.2000, under CCS (Temporary Service) Rules, 1965 was illegal as the was not covered with the said Rules.

28. The learned authorized representative of the management has argued that once the workman has accepted the terminal benefits i.e. notice pay etc. in Lok Adalat, then he barred by the res judicata. But the contention of the management in this regard is devoid of any merit. Firstly, in view of denial of the workman regarding participation in any Lok Adalat and non-receipt of any draft etc. towards payment from the management. The order or Lok Adalat dated 19.03.2005, paper No. 52/2-52/3, does not infer any participation of the workman and there is no receipt of the draft, deposited by the management, before the Tribunal. Secondly, even if it is taken for the argument's sake that the workman had accepted the one month's notice pay even then he is free to agitate the legality of his termination on the basis of procedural flaw, in form of non-observance of principles of natural justice, adopted by the management while issuing the order of termination.

29. Hon'ble Apex Court in their judgment dated 29.03.2000 in Civil Appeal No. 2280 of 2000, Nar Singh Pal vs Union India & others where a casual labour who subsequently acquired 'temporary status' terminated by the management without holding a regular departmental enquiry observed as under:

"The appellant was a casual labour who had attained the 'temporary' status after having put ten years' of service..... As pointed out earlier,

the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.

Hon'ble Apex Court further, allowing the appeal, held as under:

“The order dated 20.5.1992, by which the services of the appellant were terminated, is quashed with the direction that the appellant shall be put back on duty on the post which he held on 20.5.1992 and shall be paid all the arrears upto date and other consequential benefits admissible under the rule.”

Moreover, Hon'ble Apex Court in Bhuvnesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd. 2014 AIR SCW 3157; wherein the workman, who rendered continuous services for six years except for artificial breaks imposed upon him with oblique motive by the respondents, was held to be illegally terminated by the management with following judgment:

“the appellant is entitled to reinstatement with full back wages from the date of the termination of his service till the date of his reinstatement and other consequential benefits which accrue to him by virtue of his employment with the respondent company”

30. Thus, from the facts and circumstances of the case, and case laws cited hereinabove, I am of considered opinion that the opposite party management of Archeological Survey of India failed to prove the charges of alleged misconduct leveled upon the workman in its notice dated 11.09.2000, paper No. 13/28, the impugned order dated 17.10.2000, paper No. 13/29, terminating the series of workman w.e.f. 19.10.2000 (forenoon) is not justified and is liable to be set aside; resultantly, the workman is entitled for reinstatement in view of 2014 AIR SCW 3157 (supra) with all consequential benefits including full back wages and continuity in service within 08 weeks of publication of the award, failing which, the back wages shall carry simple interest @ 6% per annum.

31. Award as above.

LUCKNOW

22nd February, 2016.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 29 फरवरी, 2016

का.आ. 441.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 13/2000) को प्रकाशित

करती है जो केन्द्रीय सरकार को 29/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/347/1999-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th February, 2016

S.O. 441.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Kalipahari @ Colliery, M/s. Eastern Coalfields Ltd., and their workmen, received by the Central Government on 29/02/2016.

[No. L-22012/347/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 13 OF 2000

PARTIES:

The management of Kalipahari (R) Colliery, ECL

Vs.

Sri Iswar Paswan

REPRESENTATIVES:

For the management : Shri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri G. P. Mal, Ld. Advocate

Industry : Coal State: West Bengal

Dated: 03.02.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/347/99-IR(CM-II) dated 27.01.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Ghusic Colliery under Sripur Area of M/s. ECL in prematurely superannuating Sri Iswar Paswan w.e.f. 13.08.1994 and in not paying the salary to the month of July, 1994 and August (up to 13.08.1994) is justified? If not, what relief the workman is entitled?”

Having received the Order No. L-22012/347/99-IR(CM-II) dated 27.01.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 13 of 2000 was registered on 07.02.2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Sri P. K. Goswami, Learned Advocate is present on behalf of the management. Sri. G. P. Mall, Learned Advocate is present on behalf of the workman but the workman is absent and the case was fixed for evidence of the workman.

This is one of the oldest cases of this tribunal – of the year 2000. But, workman has not filed his evidence so far. So many dates have been fixed, in which 26.03.2015, 03.06.2015, 17.08.2015 and 03.11.2015 were fixed as last chance for evidence of the workman. But, neither he appeared nor he tendered his evidence. It appears that the workman has no more interest in filing evidence. Hence, I think it proper and just to close this case. As such the case is closed and a 'No Dispute Award' is hereby passed accordingly.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 29 फरवरी, 2016

का.आ. 442.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 39/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 29/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/144/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th February, 2016

S.O. 442.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Ningah Group of

Mines of M/s. Eastern Coalfields Ltd., and their workmen, received by the Central Government on 29/02/2016.

[No. L-22012/144/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT :

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 39 OF 2005

PARTIES :

The management of Ningah Colliery, ECL

Vs.

Sri Sikandar Mian

REPRESENTATIVES :

For the management : Shri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri Rakesh Kumar, President, KMC

Industry : Coal

State: West Bengal

Dated: 04.02.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/144/2004-IR(CM-II) dated 17.05.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Ningah Colliery under Sripur Area of M/s. ECL in dismissing Sri Sikandar Mian, P.R. Group-III Mazdoor w.e.f. 07/12.01.1999 is legal and justified? If not, to what relief the workman is entitled and from which date?”

Having received the Order No. L-22012/144/2004-IR(CM-II) dated 17.05.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 39 of 2005 was registered on 31.05.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Both parties are absent.

On perusal for the case record I find that neither the management nor the union has so far filed their written statement in this case though 10 years have already been passed. Registered notices were sent to the parties on 07.06.2005, 05.05.2009, 02.01.2012 and 16.10.2014. The last notice was received by Sri Rakesh Kumar, president of the union (KMC). But the union has never been taken a step. It seems to me that the union / workman is not at all interested to proceed with the case further. The case is also very old – of the year 2005. As such the case is closed and a 'No Dispute Award' is hereby passed accordingly.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 29 फरवरी, 2016

का.आ. 443.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 7/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 29/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/59/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th February, 2016

S.O. 443.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., Pench Area and their workmen, received by the Central Government on 29/02/2016.

[No. L-22012/59/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/7/02

General Secretary,
RKKMS (INTUC),
PO Chandametta,
Chhindwara

...Workman/Union

Versus

General Manager,
WCL, Pench Area,
PO Parasia,
Distt. Chhindwara (MP)

...Management

AWARD

Passed on this 29th day of January, 2016

1. As per letter dated 20-12-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/59/2001-IR(CM-II). The dispute under reference relates to:

"Whether the action of the Sub Area Manager, Newton Sub Area of WCL, PO Parasia, Distt. Chhindwara in terminating the services of Shri Istak Ali, S/o Sheer Ali, tub loader of Neewton/ Ganpathi Mine w.e.f. 16-8-2000 is legal and justified? If not, to what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 8/1 to 8/5. Case of Ist party workman is chargesheet was issued to him on 8-3-2000 alleging unauthorised absence from 1-9-2000. Reply was filed to said chargesheet on 15-3-00. Shri S.R. Bhandari was appointed as Enquiry Officer and Shri N.S.Bist was appointed as Management Representative. enquiry officer completed enquiry as empty formality. Any witness of the management was not examined. Statement of management representative was recorded by Enquiry Officer and closed the enquiry. Principles of natural justice were not followed. Management failed to prove the allegation against workman. the statement of management representative recorded before Enquiry Officer is not a material evidence. The persons who maintained registers about the attendance of employees was not examined. Enquiry Officer to access evidence in enquiry, findings of Enquiry Officer are perverse. The right to make representation to Disciplinary Authority was taken away as dismissal of workman was approved by the Disciplinary Authority. workman reiterate that the charges are not proved from evidence in Enquiry Proceedings. The order of his dismissal is illegal and deserves to be quashed.

3. Management filed Written Statement at Page 5/1 to 5/6 opposing claim of workman. 2nd party submit that workman was working as tub loader in pench area. He was habitual absentee. He was irregular in service. Workman was absent from duty on various occasions. The matter was considered sympathetically with a view to improve habit of workman. There was no improvement in his habit. Workman was on duty for nil in 1998 and 2000 and 4 days in 1999. Chargesheet was issued to workman on 8-3-2000 under Clause 26.30 of standing orders. Shri S.R.Bandari was appointed as Enquiry Officer, Management Representative was also appointed. Enquiry was

conducted on 23-6-2000. Workman was allowed assistance of co-worker Shri Ganguly. Statement of management representative was recorded in support of charges and past record of workman. Management representative was cross examined by co-worker of Ist party. 2nd party submits that Enquiry Officer submitted his findings that charges against workman are proved. Considering the findings of Enquiry Officer, Competent Authority imposed punishment of dismissal. The punishment of dismissal is proper. 2nd party prays to answer reference in its favour.

4. Workman submitted rejoinder at page 11/1 to 11/2 reiterating its contentions in statement of claim.

5. As per order dated 23-5-2014, enquiry conducted against workman was found proper and legal.

6. Considering pleadings between parties and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--------------------|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Negative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Negative |
| (iii) If not, what relief the workman is entitled to?" | As per final order |

REASONS

7. Workman died during pendency, his LR's are brought on record. Enquiry conducted against workman is found proper and legal as per order dated 23-5-2014. Whether misconduct alleged against workman are proved needs to be decided from evidence in Enquiry Proceedings. Copy of Enquiry Proceeding is produced at Exhibit M-1. Original Enquiry Proceeding is also produced. The chargesheet was issued to Ist party workman on 8-3-2000. He was alleged to be absent from duty from 1-9-99. The chargesheet was issued under Clause 26.30 related to unauthorized absence more than 10 days. The statement of Shri N.S.Bist Management Representative was recorded in enquiry on 8-3-2000. The workman was absent from duty after his transfer on 28-8-98. he was on duty for 4 days in the year 1999. Workman had not challenged material evidence of the management representative. statement of deceased workman was recorded. Workman explained that he was suffering from illness. Medical certificates are produced in the Enquiry Proceedings issued by Dr.R.K.Gupta dated 10-5-2000 is of subsequent period. Medical certificate issued by Medical Officer Burkui Hospital for the period 17-10-99, medical Certificate issued by Medical Officer, Community Health Centre about illness dated 7-7-99 to 4-9-99 was produced in the Enquiry Proceedings. There is no evidence on record that workman informed about his illness

to the management. The absence of workman for remaining period is not explained by workman. the evidence in Enquiry Proceedings cannot be re-appreciated. The evidence is sufficient to prove the misconduct alleged against workman of his unauthorized absence. Therefore I record my finding in Point No.1 in Affirmative.

8. **Point No. 2-** In view of my finding in Point no.1 charge of unauthorized absence under Clause 26.30 of Standing Order is proved. However the workman had explained that he was suffering from illness. The Medical Certificate for certain period was produced by him. workman had not given intimation of his absence. Workman in his statement had explained that he could not receive treatment in colliery hospital as medical card was insisted. He was not having medical card. Considering the explanation given by workman about his illness, he produced medical certificates, dismissal of service would be justified. In my considered view, the punishment of dismissal needs to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management imposing punishment of dismissal is not proper and legal.
- (2) Order of punishment of dismissal is modified to compulsory retirement. 2nd party be directed to consider the retiral benefits as per rules to the LR's of deceased.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 फरवरी, 2016

का.आ. 444.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 81/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 29/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/39/2009-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th February, 2016

S.O. 444.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., and their workmen, received by the Central Government on 29/02/2016.

[No. L-22012/39/2009-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/81/09

General Secretary,
 Samyukta Koyal Mazdoor Sangh (AITUC),
 CRO Camp, Iklehra,
 Chhindwara ...Workman/Union

Versus

Chief General Manager,
 Western Coalfields Limited,
 Kanhan Area, PO Dungaria,
 Chhindwara ...Management

AWARD

Passed on this 27th day of January, 2016

1. As per letter dated 30-9-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/39/2009-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management in dismissing Shri Vijay Kumar w.e.f. 23-1-03 is legal and justified? to what relief is the workman concerned entitled for?”

2. After receiving reference, notices were issued to the parties. On behalf of Ist party workman, statement of claim is filed by Secretary of SKMS Union. Case of Ist party workman is that he was working as tub loader in 25/25 Damua Colliery. Chargesheet was issued to workman on 6-11-2000. Workman has not submitted reply to the chargesheet contending that the chargesheet was not served on the workman. Without explanation of workman to chargesheet, Enquiry Officer was appointed illegally. Workman had participated in the Enquiry Proceedings. He denied charges against him. Management had allowed Defence representative. However the Defence Representative did not participate in enquiry. Workman was dismissed from service as per order dated 21-1-03. Workman was not allowed opportunity for his defence. On such ground, workman prays for his reinstatement.

3. Management filed Written Statement opposing claim of workman. 2nd party submits that workman was working as tub loader in Incline No. 24-3 in Damua colliery. The particulars of his attendance are shown in 1998 for 34 days & 1 day sick leave, in 1999 for 35 days working and 21 days leave of different kinds, in 2000 for 2 days working and 15 days sick leave. Chargesheet was issued to workman. Enquiry Officer was appointed. Enquiry was held on various dates shown in Para-5 of the Written Statement. Workman was given opportunity for his defence. Workman did not appear in enquiry. Enquiry was proceeded exparte. Enquiry

Officer submitted his report holding charges against workman proved, showcause notice was issued to workman on 11-2-02. Representation was not received from workman. considering charges proved against workman in Enquiry Proceedings, the workman was dismissed from service. Management reiterates that enquiry was properly held. Management had appointed its representative and Enquiry Officer. Workman is not entitled to any relief.

4. As per order dated 15-10-14, enquiry conducted against workman is found proper and legal. Therefore there is no need to allow management to adduce evidence for proving charges.

5. Considering pleadings on record and documents on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

6. The workman has not participated in reference proceeding. For absence of evidence, Enquiry was found proper and legal. Management's witness proved documents of enquiry collectively marked as Exhibit M-1. Workman is found unauthorisely absent. The charges held against workman are supported by evidence of management's witness and documents produced before Enquiry Officer. Therefore I record my finding in Point No.1 in Affirmative.

7. The evidence of management's witness in enquiry proceeding is clear that working days of workman in 1998 for 34 days, in 1999 for 33 days, in 2000 only for 2 days. Workman has not participated in reference proceeding. No evidence is adduced. The punishment of dismissal imposed against workman therefore cannot be interfered. For above reasons, I record my finding in Point No.2 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management in dismissing Shri Vijay Kumar w.e.f. 23-1-03 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2016

का.आ. 445.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के

प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ सं. 28/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd March, 2016

S.O. 445.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/28/2013) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SCCL, and their workmen, which was received by the Central Government on 02/03/2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI

Present: SRI G. V. KRISHNAIAH, Chairman-cum-
Presiding Officer

INDUSTRIAL DISPUTE No. 28 OF 2013

Friday, the 29th day of January, 2016

Between :

1. UTLA SUGUNAMMA, W/o.
Late Nagabhushanam,
Age 54 years,
Occ: House hold and widow,
R/o. Village Dubbapalli,
Post Sriripuram, Mandal Mutharam,
Dist. Karimnagar.
 2. U.Mohana Rangachary, S/o.
Late Nagabhushanam,
Age 22 years
 3. U.Shankara Chary, S/o.
Late Nagabhushanam,
Age 23 years
 4. Sadanadapu Jayaprada, D/o.
Late Nagabhushanam,
Age 28 years
 5. Sadanadapu Subhadra,
D/o. Late Nagabhushanam,
Age 26 years
- ...Petitioners

And

1. The General Manager,
Singareni Collieries Co.Ltd.,
Ramagundam Area-I,
PO: Godavarikhani,
Dist.Karimnagar.
 2. The Chairman & Managing Director,
Singareni Collieries Co.Ltd.,
PO. Kothagudem,
Dist.Khammam
- ...Respondents

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri D.Krishna Murthy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act praying to set aside the dismissal order dt.14-7-2000 passed by the Respondent No.1 and give employment to the petitioner No.3 as per settlements.

2. Allegations in the petition are as follows:-

The petitioner No.1 to 5 are the Legal Heirs of late U.Nagabhushanam, ex-employee of the respondents' company who was appointed on 2-3-1982. He was removed from service on 18-7-2000. His health was not good and opted for VRS on 1-11-1999. The respondents' company initiated disciplinary action against Nagabhushanam, ex-employee under 25:25 of standing orders of company and terminated him from service. The said Nagabhushanam, ex-employee had put in 18 years of service. Because of ill-health, he could not attend his duties in 1999. He was issued show cause notice terminating him from service. His services are governed by two settlements dt.1-1-2000 to 31-12-2004 U/S 12(3) of ID Act r/w 11 (B) of ID Act. Nagabhushanam, ex-employee took treatment in company hospital and also in Govt. Area Hospital, Godavarikhani from 2000 to 2005 and he died on 9-8-2005. Hence, they prayed to allow the petition as prayed for.

3. In response to this challenge, respondents filed counter justifying the dismissal of the deceased workman (Utlal Nagabhushanam). The dependents of the deceased employee having kept quiet for 13 years and raising the dispute which is barred by limitation under Sec.2A(3) of Industrial Disputes Amendment Act, 2010 and it is liable to be dismissed. The said deceased workman Nagabhushanam was appointed in the respondents company on 02-03-1982 and was dismissed in the year 2000. He was never regular to his duties during his service period and he had never put in the minimum musters as required under Mines Act. The following attendance particulars indicate that

Nagabhushanam, ex-employee was not regular to his duties during the period from 1996-1999.

Sl.No.	Year	No. of musters
1.	1996	116
2.	1997	192
3.	1998	156
4.	1999	32

During the period from January, 1999 to December, 1999, Nagabhushanam had put in only 32 musters. As the above act amounted to misconduct under Standing Orders Clause No.25.25 of the company, the petitioner was charge sheeted. After considering the documentary evidence and other evidence on record, the enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders.

4. Nagabhushanam, ex-employee submitted an application on 26-12-1999 with a request to consider his case for voluntary retirement scheme on health grounds. But it was not considered as the employee was facing disciplinary proceedings for his misconduct. Nagabhushanam, ex-employee being a chronic absentee, was charge sheeted. The enquiry officer conducted the enquiry duly following the principles of natural justice and the petitioner participated in the enquiry on 1-3-2000. During the enquiry Nagabhushanam, ex-employee stated that due to ill-health, he could not attend his duties and therefore he remained absent from services and voluntarily accepted the charge levelled against him. The respondents' company, having gone through the past record of Nagabhushanam, was constrained to dismiss him from service and accordingly a show cause notice was issued for dismissing him from service. Hence, his case does not fall within the ambit of the Memorandum of Settlements. Therefore, the respondents pray to dismiss the petition without granting any relief to the LRs of the deceased Nagabhushanam.

5. During the course of hearing, Ex.W-1 to Ex.W-14 and Ex.M-1 to Ex.M-11 are marked.

6. Heard both sides. Perused the material papers on record.

7. Respondents have filed written arguments.

8. As per the contentions of both parties the following points arise for consideration:-

1. Whether the petition is barred by limitation.
2. Whether the petitioners (LRs of the deceased workman) are entitled to any relief.

9. **Point No. 1 :** According to the petition allegations, the respondent company held counseling in the years, 2005 & 2012 to consider the reinstatement of dismissed

workman. Even otherwise Sec.2 of ID Act as prevalent in this State does not prescribe any limitation. Period of 3 years provided under Sub-Sec.3 of Central enactment is not made applicable in this State. Further under Sec.5 of Limitation Act, the delay if any can be condoned taking into consideration the explanation offered by the petitioner in the main petition itself and that filing of formal application for condonation of delay is not sine qua non for exercising the power to condone the delay available to the authorities, as per the decision of the Hon'ble High Court reported in 2015 (2) ALT 534 between Gadde Krishna Murthy and others Vs., Mandal Revenue Officer, Seethanagaram, East Godavari District & others. Further Sec.5 and Article 137 of Limitation Act are not applications confined to CPC and the words "any other applications" under Article 137 would be any application under any Act made to a court, as per the decision of the Hon'ble High Court reported in 2014 (6) ALT 543 between Desam Venkateswara Reddy and others Vs., Special Deputy Collector & Competent Authority (Land Acquisition), Gas Authority of India Ltd., Vijayawada and another. Considering all the above facts, I hold that this petition cannot be thrown out on the ground of bar of limitation. This point is accordingly answered in favour of petitioners.

10. **Point No. 2 :** This petition is filed by the L.Rs., of deceased workman Nagabhushanam. He joined in the respondent company in the year 1982. He was regular to his duties, but could not maintain minimum attendance in the year 1996 and 1998 (1996-116 days, 1998-156 days). However he maintained good attendance in the year 1997. In the year 1999, Nagabhushanam attended for duty for only 32 days. It is not in dispute that in December, 1999, Nagabhushanam applied for voluntary retirement. Infact, his application was forwarded by the Colliery Manager to the Chief General Manager, RG-I. This letter is marked as Ex.M-11, which was addressed on 13-04-2000. By the date of this letter, enquiry was conducted against Nagabhushanam and he submitted a mercy petition dated 8-04-2000. Nagabhushanam was aged 54 years by the year 2000. The Colliery Manager mentioned all the facts, made enquiry about the reasons for absence and stated in the letter as follows:-

"He was appointed in the company on 01-03-1982. His age was assessed as 36 years as on 07-01-1982 i.e., 54 years. On enquiry it was revealed that he was absent for duty due to ill-health on account of his old age.

In view of the above, kindly examine his application and consider his request on humanitarian grounds to opt voluntary retirement in favour of his son, as per rules.

His application is enclosed for further advice."

11. Obviously the above recommendation of the Colliery Manager was not taken into consideration. However, the

request of the workman seeking voluntary retirement was not considered and he was dismissed from service with effect from 18-01-2000 as per the order dated 14-07-2000 (vide Ex.M-9). Prior to this the application of the workman seeking voluntary retirement was rejected as per Ex.M-8 dated 10-08-2000. In fact, in his application dt.08-04-2000 the workman stated that he submitted an application for voluntary retirement on 01-11-1999 itself and subsequently only charge sheet was issued to him on 21-10-2000. Under this application dated 08-04-2000 marked as Ex.M-7, workman renewed his plea for voluntary retirement. Surprisingly, in the enquiry proceedings marked as Ex. M-3, it is mentioned as if the workman did not state anything when questioned by the enquiry officer. But, in the statement recorded in the enquiry Nagabhushanam clearly stated that due to ill-health he was unable to attend duties but not intentionally. Obviously the request of the workman asking for voluntary retirement was completely ignored and rejected without proper consideration. The workman maintained good attendance up to 1998 and only after he fell sick, he applied for voluntary retirement scheme. Thus it is clear that the workman was given a raw deal.

12. By any standards, the dismissal of the workman after 17 years of satisfactory service cannot be justified by the management particularly, in view of the letter addressed by the Colliery Manager under Ex.M-11. Therefore, the dismissal order dated 14-07-2000 Ex.M-9 is set aside. The workman Sri U.Nagabhushanam, Badli Filler died in the year 2005. Since the stigma of dismissal is set aside, he is deemed to have retired from service w.e.f, 26-12-1999 (date of application by workman as per Ex.M-11). The petitioners are entitled to all the consequential benefits there-of, including dependent employment.

13. In the result, the dismissal order dt.14-07-2000 marked as Ex.M-9 is set aside. Since the stigma of dismissal is set aside, Nagabhushanam is deemed to have retired from service w.e.f, 26-12-1999 (date of application by workman as per Ex.M-11). The petitioners are entitled to all the consequential benefits there-of, including dependent employment.

G V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management:-

-Nil-

EXHIBITS

For workman :

Ex.W-1 Dt. 07-05-2012 Demand letter with courier receipt
Ex.W-2 Dt. — Medical certificate

Ex.W-3 Dt. 02-06-2012 Family members certificate
Ex.W-4 Dt. 10-10-2005 Death certificate x.copy
Ex.W-5 Dt. 08-04-2000 Reply to show cause notice
Ex.W-6 Dt. — Representation of petitioner (option for VRS on health grounds)
Ex.W-7 Dt. 14-07-2000 Dismissal letter x.copy
Ex.W-8 Dt. 3/4-6-1993 Office order (appointment order)
Ex.W-9 Dt. 03-01-1999 Memorandum of settlement
Ex.W-10 Dt. 21-06-2001 Memorandum of settlement
Ex.W-11 Dt. 02-11-2009 Memorandum of settlement
Ex.W-12 Dt. 09-04-2015 Circular for enhancement of the lumpsum amount in lieu of dependent employment
Ex.W-13 Dt. 03-12-2000 Office order (training at MVTC, RG-I)
Ex.W-14 Dt. — National coal wage agreement in October, 2005.

For Management :

Ex.M-1 Dt. 21-02-2000 Charge sheet
Ex.M-2 Dt. 25-02-2000 Enquiry notice
Ex.M-3 Dt. 01-03-2000 Enquiry proceedings
Ex.M-4 Dt. — Declaration of petitioner conducting enquiry proceedings in English language.
Ex.M-5 Dt. 16-03-2000 Enquiry report
Ex.M-6 Dt. 26-03-2000 Show cause notice
Ex.M-7 Dt. 08-04-2000 Reply to show cause notice
Ex.M-8 Dt. 10/11-7-2000 VRS letter rejection letter of petitioner issued to the Colliery Manager by the respondent
Ex.M-9 Dt. 14-07-2000 Dismissal order
Ex.M-10 Dt. 26-12-1999 Representation of Nagabhushanam
Ex.M-11 Dt. 13-04-2000 Voluntary retirement of Nagabhushanam, Coal Filler consider and opt VR in favour of his son letter issued to Chief General Manager, RG-I by the Colliery Manager, GDK.6 Incline.

नई दिल्ली, 2 मार्च, 2016

का.आ. 446.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ सं. 33/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd March, 2016

S.O. 446.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/33/2013) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SCCL, and their workmen, which was received by the Central Government on 02/03/2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DIST. AND SESSIONS COURT, GODAVARIKHANI

Present: SRIG V. KRISHNAIAH, Chairman-cum-
Presiding Officer

INDUSTRIAL DISPUTE No. 33 OF 2013

Monday, the 25th day of January, 2016

Between :

U. RAJAIAH, S/o. Ashalu,
Age 48 years, E.C.No.281665,
Ex-Badli Filler,
C/o. Sri B.Amarender Rao, Advocate,
Ganga Nagar, PO : Godavarikhani,
Dist. Karimnagar-505 209

...Petitioner

And

1. The Dy.Chief Mining Engineer,
Singareni Collieries Co.Ltd.,
RK New Tech Incline,
PO : Ramakrishnapur,
Dist.Adilabad.
2. The General Manager,
Singareni Collieries Co.Ltd.,
Sreerampur Area, PO : Sreerampur,
Dist. Adilabad.

3. The Chairman & Managing Director,
Singareni Collieries Co.Ltd.,
PO. Kothagudem,
Dist.Khammam

...Respondents

This case coming before me for final hearing in the presence of Sri B.Amarender Rao, Advocate for the petitioner and of Sri D.Krishna Murthy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act challenging the dismissal of the petitioner by the respondent No.2 praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages.

2. Petitioner was dismissed from service by the respondent vide office order dt.24-12-2001 with the following charge.

CHARGE:-

“25 (25) - Habitual late attendance or habitual absence from duty without sufficient cause during the year 2000”.

3. Petitioner challenges his dismissal order stating that he was appointed as Badli Filler in the year 1988 and his services were utilized against the absenteeism/leave vacancies of regular fillers in piece rated jobs only. The performance of the petitioner during the last 3 years is as follows:-

Sl. No.	Particulars	Total musters
1.	Total physical musters of 1998 (Pay sheet of 9/98 shows 117 cumulative musters)	(177)
2.	Total physical musters of 1999	(155)
3.	Total physical musters of 1999	(88)

As the underground atmosphere and coal dust not suited to the petitioner's health, he suffered from chronic ill-health, fever, joint pains and body pain diseases from the year 1999 onwards, he underwent prolonged medical treatment in the respondents' company hospitals and other referral hospitals at regular intervals. But due to continuous underground work, the petitioner's health was not cured completely. There was no deliberate or intentional absence on the part of the petitioner in attending his duties regularly. Domestic enquiry was not conducted fairly and properly. 2nd respondent passed the dismissal order straight away without issuing any prior show cause notice proposing the said capital punishment of dismissal from service. The petitioner attended the interview before the High Power

Committee, Kothagudem, but he was not given any posting orders. Punishment of dismissal from service is extremely harsh, highly excessive and shockingly disproportionate. Hence, the petitioner prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. Petitioner was dismissed from service in the year 2001. Petitioner kept quiet for all these years and filed this petition after lapse of 12 years which is barred by limitation U/Sec.2A (3) of Industrial Disputes Amendment Act, 2010. Petitioner was appointed in the respondents company as Badli Filler on 01-03-1988. Petitioner was irregular to his duties. According to Section 52(2) of the Mines Act, 1952 an underground employee is required to put in minimum musters of 190 and surface employee is expected to put in minimum of 240 musters. Petitioner was a chronic absentee and had put in only 88 musters in the year 2000. The following attendance particulars of the petitioner indicate the fact that the petitioner was not regular to his duties and in no year, he had put in 190 musters during the period from 1997-2001.

Sl.No.	Year	No. of musters.
1.	1997	119
2.	1998	155
3.	1999	155
4.	2000	86
5.	Jan – July 2001	26

During the period from January, 2000 to December, 2000, the petitioner had put in only 88 musters. As the above act amounted to misconduct under Standing Orders Clause No.25.25 of the company, the petitioner was charge sheeted. After considering the documentary evidence and other evidence on record, the enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders.

5. The petitioner never took treatment as in-patient or out-patient in respondents' company hospitals. The respondents company after considering the past record of the petitioner and on findings that there were no extenuating circumstances for taking a lenient view was constrained to dismiss the petitioner from service. The respondents' company conducted the enquiry proceedings duly in accordance with the principles of natural justice and law giving full opportunity to the petitioner who participated in the enquiry. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

6. During the course of hearing, Ex.W-1 to Ex.W-6 and Ex.M-1 to Ex.M-10 are marked.

7. Counsel for the petitioner filed memo U/Sec. 11-A of I.D., Act stating that he is not challenging the validity of domestic enquiry conducted by the respondent and prayed this Tribunal to decide the quantum of relief to which the petitioner is entitled to.

8. Heard both sides. Perused the material papers on record.

9. Respondents filed written arguments.

10. The points for consideration are:-

1. Whether the petition is barred by limitation?

2. Whether the petitioner is entitled to be reinstated?

11. **POINT No. 1 :** According to the petition allegations, the respondents' company held counseling in the years, 2005 & 2012 to consider the reinstatement of dismissed workmen. Even otherwise Sec.2 of ID Act as prevalent in this State does not prescribe any limitation. Period of 3 years provided under Sub-Sec.3 of Central enactment is not made applicable in this State. Further under Sec.5 of Limitation Act, the delay if any can be condoned taking into consideration the explanation offered by the petitioner in the main petition itself and that filing of formal application for condonation of delay is not sine qua non for exercising the power to condone the delay available to the authorities, as per the decision of the Hon'ble High Court reported in 2015 (2) ALT 534 between Gadde Krishna Murthy and others Vs., Mandal Revenue Officer, Seethanagaram, East Guava District & others. Further Sec.5 and Article 137 of Limitation Act are not applications confined to CPC and the words "any other applications" under Article 137 would be any application under any Act made to a court, as per the decision of the Hon'ble High Court reported in 2014 (6) ALT 543 between Desam Venkateswara Reddy and others Vs., Special Deputy Collector & Competent Authority (Land Acquisition), Gas Authority of India Ltd., Vijayawada and another. Considering all the above facts, I hold that this petition cannot be thrown out on the ground of bar of limitation. This point is accordingly answered in favour of petitioner.

12. **POINT No. 2 :** The charge against the petitioner is irregular attendance from January, 2000 to December, 2000. According to the management, petitioner had put-in only 88 musters during the year, 2000. The explanation of the petitioner is that due to illness, he did not attend duty. A perusal of the enquiry report goes to show that the petitioner stated in the enquiry that he will not repeat this type of mistake in future. This was not properly considered while giving punishment to the petitioner. The fact that the petitioner regularly attended his duties for more than 11 years after joining duty in the year 1988 was also not considered. The enquiry was held in a route manner. The extreme punishment of dismissal from service was not warranted. The explanation of the petitioner to the show cause notice, contained the assurance given by the

petitioner that he will not remain absent in future. It is quite probable that after 11 years of hard manual work, petitioner could not maintain sufficient attendance during the year 2000. Respondents admitted that the petitioner appeared before the High Power Committee for consideration of his re-instatement, but he was not reinstated. There was a gap of 7 years between first appearance of petitioner before the High Power Committee in the year 2005 and second appearance of the petitioner in the year 2012. Petitioner was neither reinstated nor informed in the year 2005 itself that he cannot be reinstated. Management successfully kept his career in abeyance. The manner, in which the petitioner case was dealt with, showed a prejudiced attitude but not a reasonable attitude to a workman. In a DIVISION BENCH JUDGMENT OF GUJARAT HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN : R.M., PARMAR VRS., GUJARAT ELECTRICITY BOARD, the following guide lines were laid down in the matter of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.
4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having

regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.
7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.
8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives rise to a feeling of class conflict. It does more harm than good to the employer as also to the society.
9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic

offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

13. Keeping in view the above observations which have taken into consideration all aspects of the punishment particularly the extreme penalty of the dismissal, I hold that the punishment of dismissal from service was uncalled for and unjustifiable. Therefore, this is a fit case where this Court can exercise discretion U/Sec.11 of ID Act and the petitioner deserves to be reinstated into service as Badli Filler to meet the ends of justice.

14. In the result, the order of dismissal dt.24-12-2001 marked as Ex.M-10 is set aside. The respondents' company is directed to reinstate the petitioner into service as Badli Filler, without back wages, but with protection of service of the petitioner from 1988 till his dismissal for the purpose of service benefits including regularization and promotion. The petitioner has to undergo medical fitness test as per the rules of the management. If the petitioner fails the fitness test, he is deemed to have retired voluntarily and will be entitled to benefits flowing from such voluntary retirement.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management:-

-Nil-

EXHIBITS

For workman :

Ex.W-1	Dt. 10-02-1998	Office order appointing as Badli filler, x.copy
Ex.W-2	Dt. 24-12-2001	Dismissal order x.copy.
Ex.W-3	Dt. 09-04-2008	Interview call letter
Ex.W-4	Dt. 13-07-2001	Enquiry proceedings
Ex.W-5	Dt. —	Pay slip for the month of Sept., 1998
Ex.W-6	Dt. 05-11-2012	Demand letter with postal receipts and ack.,

For Management :

Ex.M-1	Dt. 17-03-2001	Charge sheet
Ex.M-2	Dt. 17-03-2001	Reply to charge sheet
Ex.M-3	Dt. 27-06-2001	Enquiry notice

Ex.M-4	Dt. 28-06-2001	Ack., card to the enquiry notice
Ex.M-5	Dt. 13-07-2001	Enquiry proceedings
Ex.M-6	Dt. 17-07-2001	Enquiry report
Ex.M-7	Dt. 26-07-2001	Show cause notice
Ex.M-8	Dt. 26-07-2001	Ack., to show cause notice
Ex.M-9	Dt. 30-07-2001	Reply to show cause notice
Ex.M-10	Dt. 24-12-2001	Dismissal order.

नई दिल्ली, 2 मार्च, 2016

का.आ. 447.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ सं. 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd March, 2016

S.O. 447.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/35/2013) as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SCCL, and their workmen, which was received by the Central Government on 02/03/2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DIST. AND SESSIONS COURT, GODAVARIKHANI

Present: SRI G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

INDUSTRIAL DISPUTE No. 35 OF 2013

Monday, the 25th day of January, 2016

Between :

Kazipeta Venkatesham,
S/o. Rayapocham,
Age 40 years,
Occ: Ex-Badli Filler,
R/o. Gunjapadugu village,
Mandal Manthani,
Dist. Karimnagar

...Petitioner

And

The Chief General Manager,
Singareni Collieries Co.Ltd.,
Ramagundam Area-I Sector,
PO Godavarikhani,
Dist. Karimnagar

... Respondent

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri D.Krishna Murthy, Advocate for the respondent; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act challenging the dismissal of the petitioner by the respondents praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages.

2. Petitioner was dismissed from service by the respondent vide office order dt.14-06-1999 with the following charge.

CHARGE:-

“Absent to duties without leave or habitual absence of duty which is misconduct Under Section 25(25) standing orders of the Company”.

3. Petitioner challenges his dismissal order stating that he got employment in place of his father as Badli Filler by the respondent's company on 6-3-1995. The petitioner discharged his duties to the fullest satisfaction of his superiors till 1998. As the petitioner's health was not in good condition in the year 1998, the respondent issued charge sheet and charge memo and dismissed him from service on 16-6-1999. The petitioner submitted an application and medical certificates, but they were not considered while removing him from service. The respondent did not conduct enquiry properly and no subsistence allowance was paid to the petitioner. Petitioner's appointment was purely on temporary basis and he had to attend his job as and when there was work in the mine. The company is adopting “Hire and Fire” policy while giving employment one way and taking another way by initiating stigmatic proceedings against the petitioner. Petitioner attended interview before the High Power Committee, Kothagudem, but there was no response. Punishment of dismissal from service is extremely harsh, highly excessive and shockingly disproportionate. Hence, the petitioner prays to allow the petition.

4. In response to this challenge, respondent filed counter justifying the dismissal of the petitioner. The petitioner was dismissed from service in the year 1999. The petitioner kept quiet for all these years and filed this petition after lapse of 15 years which is barred by limitation

U/Sec.2A(3) of Industrial Disputes Amendment Act, 2010. The petitioner was appointed in the respondents company as Badli Filler on 24-03-1995. The petitioner was irregular to his duties. According to Section 52(2) of the Mines Act, 1952 an underground employee is required to put in minimum musters of 190 and surface employee is expected to put in minimum of 240 musters. The petitioner was a chronic absentee, had put in only 20 musters in the year 1998. The following attendance particulars of the petitioner indicate the fact that the petitioner was not regular to his duties since his appointment in the year 1995.

Sl.No.	Year	No. of musters.
1.	1995	137
2.	1996	191
3.	1997	108
4.	1998	20

During the period from January, 1998 to December, 1998, the petitioner had put in only 20 musters. As the above act amounted to misconduct under Standing Orders Clause No.25.25 of the company, the petitioner was charge sheeted. After considering the documentary evidence and other evidence on record, the enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders.

5. The respondents company after considering the past record of the petitioner and on findings that there were no extenuating circumstances for taking a lenient view was constrained to dismiss the petitioner from service. The respondent's company conducted the enquiry proceedings duly in accordance with the principles of natural justice and law giving full opportunity to the petitioner who participated in the enquiry. Therefore, the respondent prays to dismiss the petition without granting any relief to the petitioner.

6. During the course of hearing, Ex.W-1 to Ex.W-8 and Ex.M-1 to Ex.M-7 are marked.

7. Counsel for the petitioner filed Memo U/Sec. 11-A of I.D., Act stating that he is not challenging the validity of domestic enquiry conducted by the respondent and prayed this Tribunal to decide the quantum of relief to which the petitioner is entitled.

8. Heard both sides. Perused the material papers on record.

9. Respondent filed written arguments.

10. The points for consideration are:-

1. Whether the petition is barred by limitation?

2. Whether the petitioner is entitled to be reinstated?

11. **POINT No.1 :** According to the petition allegations, the respondents' company held counseling in the years,

2005 & 2012 to consider the reinstatement of dismissed workmen. Even otherwise Sec.2 of ID Act as prevalent in this State does not prescribe any limitation. Period of 3 years provided under Sub-Sec.3 of Central enactment is not made applicable in this State. Further under Sec.5 of Limitation Act, the delay if any can be condoned taking into consideration the explanation offered by the petitioner in the main petition itself and that filing of formal application for condonation of delay is not sine qua non for exercising the power to condone the delay available to the authorities, as per the decision of the Hon'ble High Court reported in 2015 (2) ALT 534 between Gadde Krishna Murthy and Others Vs., Mandal Revenue Officer, Seethanagaram, East Godavari District & Others. Further Sec.5 and Article 137 of Limitation Act are not applications confined to CPC and the words "any other applications" under Article 137 would be any application under any Act made to a Court, as per the decision of the Hon'ble High Court reported in 2014 (6) ALT 543 between Desam Venkateswara Reddy and Others Vs., Special Deputy Collector & Competent Authority (Land Acquisition), Gas Authority of India Ltd., Vijayawada and Another. Considering all the above facts, I hold that this petition cannot be thrown out on the ground of bar of limitation. This point is accordingly answered in favour of petitioner. The petitioner did file a petition before this Tribunal, it was not registered and the petitioner filed a writ seeking registration of the petition. Therefore, it cannot be stated that there was inordinate delay in approaching this Tribunal. This point is answered in favour of respondent.

12. **POINT No. 2 :** A perusal of the enquiry report goes to show that it is a cyclostyled copy of enquiry report format. Period of absence relates to 1998 (January to December, 1998). Even the statement of management witness was filled-up in the already cyclostyled format. The explanation of the petitioner was noted but it was not properly considered. Though irregular attendance is made a ground for misconduct when there is explanation by workman it should have been properly considered. The cyclostyled enquiry proceedings marked as Ex.M-4 goes to show that the enquiry was conducted in a routine manner. The extreme penalty of dismissal from service was imposed in a routine manner without providing a chance to the petitioner to mend himself. The petitioner could have been put under observation for a period of one year and then the penalty could have been decided. Therefore, the respondent is not justified in imposing the punishment of dismissal. As per the decision report in DIVISION BENCH JUDGMENT OF GUJARAT HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARAT ELECTRICITY BOARD, the following guide lines were laid down in the matter of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in

order to seek retribution or to give vent to feelings of wrath.

2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.
4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.
6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time

and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

13. Keeping in view the above observations which have taken into consideration all aspects of the punishment particularly the extreme penalty of the dismissal, I hold that the punishment of dismissal from service was uncalled for and unjustifiable. Therefore, this is a fit case where this Court can exercise discretion U/Sec.11 of ID Act and the petitioner deserves to be reinstated into service as Badli Filler to meet the ends of justice.

14. In the result, the order of dismissal dt.14-06-1999 marked as Ex.M-7 is set aside. The respondents' company is directed to reinstate the petitioner into service as "afresh

Badli Filler" and he shall be subjected to medical test for the post. If the petitioner fails the fitness test, the dismissal order stands good. Petitioner is not entitled to back wages.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For the workman:-

-Nil-

For the Management:-

-Nil-

EXHIBITS

For the workman :

Ex.W-1	Dt. 22-09-2006	Demand letter
Ex.W-2	Dt. 14-06-1999	Dismissal order x.copy
Ex.W-3	Dt. 21-04-1999	Show cause notice
Ex.W-4	Dt. 28-02-1999	Charge sheet x.copy
Ex.W-5	Dt. —	Pay slip for the month of Oct., 1996
Ex.W-6	Dt. 20-06-1999	Fitness certificate issued by Dr.Rama Upendar
Ex.W-7	Dt. 20-06-1999	Form-A (Medical certificate for leave extension)
Ex.W-8	Dt. 10-12-2007	Order in W.P.No.24967/2007

For the Management :

Ex.M-1	Dt. 28-02-1999	Charge sheet
Ex.M-2	Dt. 17-03-1999	Reply to charge sheet
Ex.M-3	Dt. 17-03-1999	Declaration given by petitioner stating that he has no objection to conduct enquiry proceedings in English, x.copy
Ex.M-4	Dt. 28-02-1999	Domestic enquiry proceedings
Ex.M-5	Dt. 18-03-1999	Enquiry report, x.copy
Ex.M-6	Dt. 21-04-1999	Show cause notice
Ex.M-7	Dt. 14-06-1999	Dismissal order.

नई दिल्ली, 2 मार्च, 2016

का.आ. 448.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 15/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2016 को प्राप्त हुआ था।

[सं. एल-22012/280/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd March, 2016

S.O. 448.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Bhojudih Coal Washery, M/s. BCCL, and their workmen, received by the Central Government on 02/03/2016.

[No. L-22012/280/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 15 OF 2002

PARTIES:

The management of Bhojudih Coal Washery,
M/s. B.C.C.L.

Vs.

Sri Sudhir Bouri and 61 others

REPRESENTATIVES:

For the management : Sri. P. K. Das, Ld.
Advocate

For the union (Workman) : Sri. D. Mukherjee,
Ld. Advocate

Industry : Coal State: West Bengal

Dated: 05.02.2016

AWARD

In exercise of the powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/280/2001-IR(CM-II) dated 31.05.2002 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Bhojudih Coal Washery in terminating the services of Sh. Sudhir Bouri and 61 others (list enclosed) instead of regularizing their services is legal and justified? If not, to what relief they are entitled to? “

Having received the Order No. L-22012/280/2001-IR(CM-II) dated 31.05.2002 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 15 of 2002 was registered on 24.06.2002. Accordingly an order to that

effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

1. The case of the workmen as per averment in short is that they had been working at Bhojudih Coal Washery since 06.09.1994 regularly and continuously under the direct control and supervision of the Management of Bhojudih Colliery. They have been engaged by the Management to perform regular job which are permanent and perennial in nature and are directly connected with the operation of the coal washery and for the ultimate benefit of the Management. The implements are supplied by the Management. The scheduled list of workmen includes fitter, welder, Cutter etc. and they are being engaged for more than 240 days in work per year and worked in the premises of the washery but are not paid wages by the Management as per the National Coal Workers Agreement (NCWA). Wages are being disbursed through different intermediaries through sham and Camouflaging transaction. The workmen approached the Management several times for regularization of service but in vain. It resulted in annoying the Management and consequently the Management stopped the engagement of some of the workmen without assigning any reason. The higher ups in the Management asked them to wait assuring for favourable consideration by the Head Quarter and in fact those workmen were re-engaged w.e.f. 05.07.1997. They worked as usual like earlier period of their engagement but the Management continued to pay wages below the prescribed rate under NCWA without paying any heed to their protest. The Industrial Dispute was raised by them through the Union consequent to the failure of conciliation and hence this reference. The Union urged for regularization of service of the workmen and to hold the action of the Management in terminating their service instead of regularizing the service as illegal and unjustified.

2. The case of the Management on the other hand, shun of all details and as borne out in their pleading is as follows :-

The M/s. Bharat Coking Coal Ltd. (M/s. B.C.C.L. in short) entered into agreement with one M/s. Triveni Engineering works (T.E.W.) for con raising of 100 TPS Froth Floatation Plant at a value of Rs. 7,11,64,000/- (Rupees seven Crore Eleven Lakh and Sixty Four Thousand only) at Bhojudih Coal Washery. The agreement was entered upon between them for design, construction, supply of machineries & equipments including all civil structural works etc. Another agreement dated 16.10.1998 subsequently was also executed with M/s. Humboldt Wedag for completing the job the plant on turn key basis.

The construction erection and commissioning of the plant is one time job and not a permanent in nature. As per the work order the contractor was to supply the plant, the design and commission the same through their Contractor, engineer's machine, tool and equipment. The colliery Management had no manner of control over the men and machineries of the contractor. Payment of wages was made by the contractor Licensee to the contractor M/s. Humboldt u/s 13 of Contract Labour (Regularization and abolition) Act, 1970 was granted by the Asst. Labour Commissioner (Central) Asansol on 21.9.1999, the Employer Management stood registered under the said Act earlier. The Contractor employed some workers and retrenched the service of contract labours on Completion of the work and disbursed all benefits on them as per law. The workmen in this reference are not workman as defined U/s 2(s) of the I.D. Act. And that there has been no relation of Employer and Employee between the Management and the workmen. The Union has no locus-stand to raise the industrial dispute and further that the reference by the Appropriate Govt. is bad in the eye of laws. Denying all the assertion of the workmen in specific and denying the allegation of violation of natural justice, the Employer urged for holding there action in not regularizing the workmen in service as legal and justified entitling no relief to them.

3. In view of the variance of the parties on both fact and law the following vital issues are to be determined :-

- (i) Whether, Employer Employee relation exists between the parties.
- (ii) Whether the job in question is permanent in nature.
- (iii) Whether the workmen are entitled for regularization under the NCWA.

By pleading that the workmen were engaged and worked under the direct control and supervision of the Management which allegedly prepared records to show that it was made by intermediaries like M/s. Tribeni Engineering & M/s. Humboldt Wedag to camouflage the fact, the union certainly does not tend to prove the Employer Employee relationship by direct evidence either documentary or oral and admittedly no such evidence exist. The union, therefore bears the heavy burden of proving the nature of the nexus of the principal Employer and the said contractor to find out as to whether the said contractors at all worked as the agent or intermediary of the M/s. B.C.C.L. On that score the union mainly rely on the Muster Roll Ext1(W) and the Register of workmen Ext.2 (W) and of course on the admission of the Management in the pleading as well as in the oral evidence of one Sri Sukendu Prasad, Dy. Manager of Bhojudih Coal Washery. The evidence of Sri Mahadev Mahatha (W.W.1) reveals that they were engaged to work in the Bhojudih Coal Washery under the direct control and supervision of the Management and the Management paid them wages through intermediaries. They

were paid wages below the rate prescribed under NCWA. Both the Ext. W-1 and Ext. W-2 show their engagement under the contractor M/s. Humboldt but the documents bear the signature of Company's Welfare Officer. This fact is bound to create suspicion as the terms of the licence issued under the CL(RA) Act. in favour of the Principal Employer and the contract do not stipulates the terms and conditions of payment of wages through any other party. The Management too has not hinted about it in their pleading. The evidence of the workmen has not been dislodged in the cross-examination who on the other hand affirmed that they were getting salary from the Management. The Dy. Manager Surendra Prasad who was examined much later to the filing of the evidence-in-chief of the workmen has also not refuted the above fact. The witness admitted about his lack of knowledge about the details of the entrustment of job to M/s. Tribeni Engineering and to M/s. Humboldt for erection and commissioning of the plant and about retrenchment of workers etc. Thus this evidence is of no help to the Management to dislodge the claim of the workmen on the above point. Rather it is fatal to them as he admits that the 'B' register was not filed by the Management and he has no idea at all about any contract given to M/s. Universal Construction and M/s. Minakshi Enterprises at all who figures in the Muster Roll. Further it appears that both the said contractors have not been granted licence under the CLRA Act. It is settled law that, facts are to be decided on the basis of preponderance of probabilities. As such in view of the Ext W-1 and Ext W-2, the unimpeached evidence of the workmen (WW-1) and admitted facts as indicated above, there is ample reason to find the direct role of the principal Employer i.e. M/s. B.C.C.L. in payment of wages to the workmen through the said two contractors. The M/s. Humboldt Company does not appear anywhere in the scene though as a licensee under CLR Act, they are to make payment of salary directly or through their contractors under him as the case may be.

4. Surprisingly, the Management does not come forward with the relevant documents to show their bonafide that they have no role in engaging the workmen, in payment of salary or in their retrenchment etc. Except the said two Agreements with the M/s. Tribeni Engineering and M/s. Humboldt and the two licences, the Management has not relied on any documents which do not help proving their bonafide or brushing aside the allegation \ against them. Even, none from the M/s. Humboldt Company nor any other material witness have been examined by the Management. The terms of the licence stipulates strict adherence of the terms & conditions including filing of return to secure the status of the contract labours at per with Company's employees and against their exploitation. With-holding of such vital facts and evidence by the employer warrants adverse inference against their stand. As such the Employer Employee relationship for purpose of the I.D. Act in this case between them cannot be ruled out from any stand point.

5. It is found that the claims of the workmen stand to the true test indicated in the decision of the Hon'ble Supreme Court in the case of *HUSSAINBHAI, CALICUT v/s THE ALATH FACTORY THEZHILALI UNION KOZHIKODE & others*, reported in S.C.L.J., Vol.-15, Page-112 to decide the Employer Employees relation. It has been observed that "the true test may with brevity be indicated once again where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, the other is, in fact, the Employer. The economic control over workers subsistence skills and continued employment if he, for any reason chokes of the worker is virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contract is of consequence. When on lifting the veil or looking at the conspectus of factors governing employment, discern the naked truth, though draped in different paper arrangement, that the employer is the Management not the immediate contractor". The union's allegation that the statutory records were not prepared by the M/s. B.C.C.L. deliberately to camouflage the real fact cannot be ruled out. The Management has not taken the pain to prove that the M/s. Universal Construction and M/s. Minakshi Enterprises were at all licensee under the CL(RA) Act. against the concern work or at all worked at the behest of M/s. Humboldt Wedag. No documents have been relied by the Employer to prove the appointment of the workmen by M/s. Tribeni Engineering and retrenchment made by M/s. Humboldt. Thus it can be concluded safely that the workmen in fact were engaged by the M/s. B.C.C.L. itself and papers have been prepared otherwise to cover the same for whatever purpose. As per the law laid down by the Hon'ble Supreme Court in the reported decision in 1993 LAB IC 1323 (*SECRETARY, HARYANA STATE ELECTRICITY BOARD VS. SURESH & OTHERS*) the workmen in similar circumstances have been considered as the legally employees of the Management.

6. The Union cites the reported decision of the Apex Court in LLR 2001 Page- 961 (*STEEL AUTHORITY OF INDIA LTD. VS. NATIONAL WATER FRONT WORKERS & OTHERS*) and 2002 LLR 449 (*INDIAN FARMERS FERTILIZER CORPORATIVE LTD. VS. INDUSTRIAL TRIBUNAL*). The rulings of the Hon'ble Apex Court in all the above cases are unequivocally, in favour of the workmen on the point.

7. In the pleadings the Employer has persistently pleaded that the job in question is one time job and the workers were retrenched by the contractor after the construction was over. As seen above the employer has failed to substantiate their claim of absence of Employer Employee relation and on this point too no credible circumstances have been proved. Facts remain that the workmen have been working in the premises of the Employer

under different contractors for a long period continuously and receiving salary. The employer has very much remained attached to it through their officials who have signed the Muster Rolls etc. The claim of the workmen that they have been working in different capacity for the employer's benefit has not been discredited by any sort of evidence. The evidence of the Dy. Manager (MW-1) is conspicuously silent on this point except in his evidence-in-chief it has been mentioned that the job (meaning the job in which the workmen were engaged by the Contractors) were not of permanent nature. Certainly had it been proved that the workmen were not engaged by the Employer but by the Contractor and were retrenched by the contractors, the above contention of the Employer would have been believed. To repeat, no documents of appointment and retrenchment of workmen by the Contractors and statutory return made by the licensed contractor to the Labour Commissioner have been proved. Such stealthy gesture indicates about the endeavor of the Employer to cover up the permanent or perennial nature of the job of the workmen. From the undisputed muster rolls and other papers it can be well gathered that the workmen have worked regularly and continuously since 06.09.1994 putting in more than 240 days of each calendar year. There is no specific denial of facts that the workmen were not paid wages in terms of NCWA.

8. In view of the above discussion and the fact having amply proved by evidence that the contractors have been interposed and the contract being found to be a camouflage one the workmen in question are to be treated as the employees of the principal Employer i.e. the M/s. B.C.C.L.. The above conclusion derives strength from the reported decision of the Hon'ble Supreme Court in the case of *STEEL AUTHORITY OF INDIA AND OTHERS ETC. v/s NATIONAL UNION WATER FRONT WORKERS AND OTHERS* (2001 LLR 961). It has been held that:-

"the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions that the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA (Contract Labour Regulation & Abolition) Act in respect of the concerned establishment has been

issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

Reliance has also been put on many other reported decisions (as per memo of argument) by the Union to bolster their stand on the same point.

9. In view of the above finding and conclusion reached above on two vital question i.e. the Employers Employees relation between the parties and the nature of the job and above all finding that the workmen having been deprived of their rights construed as above are certainly entitled to be treated as the employee of the M/s. B.C.C.L. and consequently the action of the Management of Bhojudih Coal Washery in terminating the services of Sri. Sudhir Bouri and 61 others named in the reference instead of regularizing their service is held not legal and justified. The workmen are entitled to be treated as the employee of the M/s. B.C.C.L. and reinstatement. The workmen are entitled to be reinstated from the date of their retrenchment and the Management is required to pay them back wages less the wages already paid as per prescribed wages under the NCWA. The Management is to disburse the wages and other monetary benefits within three months of the notification of the award pending regularization of official papers. Hence, it is ordered.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 2 मार्च, 2016

का.आ. 449.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 141/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2016 को प्राप्त हुआ था।

[सं. एल-22012/71/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd March, 2016

S.O. 449.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Moira Colliery under Bankola Area of M/s. ECL, and their workmen, received by the Central Government on 02/03/2016.

[No. L-22012/71/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT :

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 141 OF 2005

PARTIES :

The management of Moira Colliery, ECL

Vs.

Sri Swapan Majhi

REPRESENTATIVES:

For the management : Sri P. K. Das, Ld. Advocate

For the union (Workman) : Sri S. K. Pandey, Gen. Secy., CMC (HMS)

Industry : Coal State: West Bengal

Dated: 09.02.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/71/2005-IR(CM-II) dated 08.12.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Moira Colliery under Bankola Area of M/s. Eastern Coalfields Limited in dismissing Sh. Swapan Majhi, U.G. Trammer (PR) U.M. No. 61295 from service w.e.f. 04.06.1996 is legal and justified? If not, to what relief the workman is entitled?”

Having received the Order NO. L-22012/71/2005-IR(CM-II) dated 08.12.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 141 of

2005 was registered on 23.12.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Both parties are absent.

On perusal for the case record I find that so many dates have been fixed for evidence. But, workman did not submit his evidence. The reference is of year 2005, which is old one. Last 4 (Four) dates have been fixed as last chance. But workman neither filed evidence, nor appeared. It appears that the workman is not interested to contesting the reference. Hence, I think it proper and just to close this case. As such the case is closed and a 'No Dispute Award' is hereby passed accordingly.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 2 मार्च, 2016

का.आ. 450.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 95/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2016 को प्राप्त हुआ था।

[सं. एल-22012/226/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd March, 2016

S.O. 450.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Kenda Area of M/s. ECL, and their workmen, received by the Central Government on 02/03/2016.

[No. L-22012/226/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ASANSOL**

PRESENT :

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 95 OF 2007

PARTIES :

The management of Lower Kenda Colliery, ECL

Vs.

Ukhra Colliery Mazdoor Union (INTUC)

REPRESENTATIVES:

For the management : Sri P. K. Das, Ld.
Advocate

For the union (Workman) : Sri Susil Banerjee, Org.
Secy. of the Union

Industry : Coal State: West Bengal

Dated : 10.02.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/226/2007-IR(CM-II) dated 30.10.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Lower Kenda Colliery under Kenda Area of M/s. ECL in denying payment of wages w.e.f. 01.07.2003 to 19.12.2003 is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order No. L-22012/226/2007-IR(CM-II) dated 30.10.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 95 of 2007 was registered on 20.11.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Sri P. K. Das is present on behalf of the management. Union / workman is absent.

Workman is absent from so many dates. On 24.05.2014 union representative was present on behalf of the workman and the case was fixed for filing written statement on 18.07.2012. After 18.07.2012, 10 dates were fixed for filing written statement of the workman but the union did not file written statement. On 19.10.2014 tribunal passed order to send notice to the union for filing written statement. Notice

was served on 21.10.2014. Dates were fixed, 02.12.2014, 09.02.2015 and 19.03.2015, neither the workman / union is present nor files written statement. More than 7 years have passes even workman has not filed written statement. It appears that the workman is not anymore interested to proceed with the case any further. As such the case is closed and a 'No Dispute Award' is hereby passed accordingly.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 3 मार्च, 2016

का.आ. 451.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 20/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/03/2016 को प्राप्त हुआ था।

[सं. एल-20012/264/1993-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 3rd March, 2016

S.O. 451.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 20/1997) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 03/03/2016.

[No. L-20012/264/1993-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), AT DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 20 of 1997

Employers in relation to the management of
C.V. Area M/s. BCCL

AND

Their workmen

Present :

Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Shri S.N.Ghosh, Advocate

For the workman : Shri U.P. Sinha, Advocate

State : Jharkhand

Industry : Coal

Dated 08/01/2016

AWARD

By Order No. L-20012/264/1993-IR-(CM-I), dt. 04/01/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand by the Union that S/Sh. Vyasdeo Pandey and 80 others (as per list enclosed) for regularisation by the management of Chanch Victoria Area No. XII of M/s. Bharat Coking Coal Limited, is legal and justified? If so to what relief are there workmen entitled?"

ANNEXURE

List of workmen

Sl. No.	Name	S/o	Vill	Post	Thana	District
1	2	3	4	5	6	7
1.	Arija Singh	Ramendra Singh	Nemrajpur	Akomi	Daudnagar	Aurangabad
2.	Vijay Kumar Verma,	S/o Late Ram Janam Verma	Dhanhar	Sundargan	Rishias	Aurangabad
3.	Mahanand	Sahaeo Mahato	Shankarpur	Sarsola	Aurangabad	Aurangabad
4.	Amalendra Prasad	Sri Parasnath Singh	Meoabigah,	Samser Nagar	Daudnagar	Auranbad

1	2	3	4	5	6	7
5.	Shiou Gorai,	Sudhir Gorai	Palsia (gosai Basti)	Mugma	Nirsha	Dhanbad
6.	Basant Singh	Late Ram Sudin Singh	Mamrajpur,	Akosi (Daud nagar)	—	Aurangabad (Bihar)
7.	Satyadeo Singh	Ramnath Singh	Jaga Bigha	Ancha	Daudnagar	Aurangabad (Bihar)
8.	Subir Kumar	Shivdatt Verma	Bairi	Latta	Bairi ganj	Aurnangabad (Bihar)
9.	Brahmadeo Singh,	Late Ramsudih Singh	Mamrajpur	Akoni (Daudnagar)	Aurangabad	Aurangabad
10.	Lalan Prasad	Maosafir Prasad,	Gira	Obra	Obra	Aurangabad (Bihar)
11.	Jitendire Narayan Choudhary	Sital Choudhary,	Sd			
12.	Hari Ram	Srinath Kahar	Bahadurpur			
13.	Ramlal Hemram	Laban Hemram	Koobita	Kalyansri	Kulti	Burdwan (W.B)
14.	Surendra Kumar	Dhanuk Mahato	Shankarpur	Kaithi	Obra	Aurangabad, Bihar
15.	Satyendra Prasad	Ganesh Prasad	Mamrejpur	Akona	Daudnagar	Auranbad, Bihar
16.	Arjun Bhagat	Sri Deo Lal Bhagat	Saifganj	Dosma	Rariganj	Aurangabad (Bihar)
17.	Surendra Prasad	Ganga Prasad	Gokul Bigha	Sarsoli (Jamhour)	Jamhour	Auranhabad, Bihar
18.	Ramswarun Verma	Janki Mehta	Saitganj	Uosma (Jalim)	Rafiganj	Aurangabad (Bihar)
19.	Usman Mean,	Sri Suman Mean	Phawar	Phawar	Dailtanganj	Plalamu, Bihar
20.	Ramswarun Verma	Khaderan Verma	Baligaou	Baligaou	Rafiganj	Aurangabad, Bihar
21.	Radheshyam Mahto	Malik Chand Mahto	Bahuria Barwa	Mujhara	Mujhara	Aurangabad, Bihar
22.	Ajit Kr. Singh		Harwah	Ambar (Amba)	—	Aurangabad , Bihar
23.	Madan Shaw		Nawada	Nawada	—	Nawda, Bihar
24.	Ramjanm Singh	Sri Jadunandan Singh	Shankarpur	Kaiathi	Obra	Aurangabad, Bihar
25.	Rajeshwar Singh	Sukhdeo Singh	Memrejpur	Akona	Daudnagar	
26.	Sd/-					
27.	Rajendra Prasad	—	Kataiya	Deo	—	Aurangabad
28.	Satyendra kumar	Sri magan Yadav	Simarhua	Karhotia	Goha	Aurangabad (Bihar)
29.	Dinu narayan Yadav	Tribeni Yadav	Knorikhan	Sihull (Dargah)	Goha	Aurangabad
30.	Bharat Prasad	Somar Mahto	Mamrejpur	Akoua	Daudnagar	Aurangabad (Bihar)

1	2	3	4	5	6	7
31.	Nandkumar Prasad	Wakil Bhagat	Mansagar	Mansagar	Chardhkhri	Mojnur (Ara, Bihar)
32.	Dinesh Prasad,	Sri Jagnandan Bhagat	Lakhdihra	Lakhdihra	Obra	Aurangabad (Bihar)
33.	Saligram Singh	Sri Satyadeo Singh,	Himatnur,	Surhia	Singhwalia	Gonalganj (Bihar)
34.	Sohan Prasad	Doman Prasad	Shankar di,	Shankardih	Goha	Aurangabad (Bihar)
35.	Bhusan Singh	Soheb Singh	Shankardih	Shankardih	Goha	Aurangabad (Bihar)
36.	Sd/-					
37.	Pheku	—	—	—	—	—
38.	Arbind Kumar	Sri Ghandrajaswara	Jamin Kat	Hijamabad	Nijamabad	Ajamgarh (U.P)
39.	Kemlesh Kumar	Baidhna th Mehta	Priaoa	Ramchadra Nagar	Aurangabad	Aurangabad
40.	Kishore Kumar	Muneshwar Prasad	Amhara	Lakhisaraisarai	Lakhisarai	Monghyer (Bihar)
41.	Ashok Kr. Thakur	Sri Jaikisan Thakur	—	Bhurkundi	Banka	Bhagalpur
42.	Subhas Hambram,	Guhira hambram	Kithibita Kalyanisri	Kalyanisri	Kulti	Burwan (W.B.)
43.	Brajesh Mehta	Nathun Mahata	Saifganj	Dosma	Aurangabad	Bihar
44.	Birendra Shaw	Lakshman Shaw, Porhwa	Lohani	Kanshiya	Aurangabad	Aurangabad (Bihar)
45.	Bhola Mahto	Bira Mahat	Kathria	Dkona	Daudnagar	Aurangabad (Bihar)
46.	Vyasdeo Pandey	Ram Ashish Pandey	Sultasnpur	Haldi	Haldi	Balia (UP)
47.	Anil Majhi	Baburam Majhi	Bans Jaja	Mugma	Nirsha	Dhanbad
48.	Mukhra Tudu	Singhray Tundu	Batidih	Chirkunda	Chirkunda	Dhanbad
49.	Safhauddin	Abdul	Ledaharia	Ledaharia	Chirkunda	Dhanbad
50.	Panchu Sahu	Bancha Sah	Barhagaon	Nimia Maith	Kudla	Janjam Orissa)
51.	Suryadeo Mahato	Thakur Mahto	Saifganj	Dosma	Rafiganj	Aurangabad (Bihar)
52.	Cahdeswar Mehta	Gurudayal Mehta	Saifganj	Dosma	Rafiganj	Aurangabad (Bihar)
53.	Sd/					
54.	Sd/-					
55.	Nandkishore Mahto	Uma Mahato	ahadurpur	Jakhim	Rafiganj	Auranbgabad (Bihar)
56.	Baliram Singh	Muneshwar Singh	Mewasingh	Samshernagar	Daudnagar	Aurangabad (Bihar)

1	2	3	4	5	6	7
57.	Bansidhar Ram	Shri Motilal Ram	Wadipatti	Sikria	Karakat (Gorair)	Rohtas, Sararam Bihar
58.	Rajiv Prasad	Sri Ramkrit Prasad	Akora Pilachi	Daudnagar	Daudnagar	Aurangabad (Bihar)
59.	Hriday Narayan	Sri Gansi Mahto	Daulat purganj	Obra	Aurangabad	Aurangabad (Bihar)
60.	Ramavtar Das,	Late Mui Das	Solra	Solra	Prarya	Gaya (Bihar)
61.	Rakritram	Sri Jagan Ram	Berki	Berki	—	Gaya (Bihar)
62.	Krishna Ram	Sri Dhaneshwar ram	Barhiwigah	Pakan Station	Chanauti (Khas)	Gaya (Bihar)
63.	Sd/-					
64.	Om Prakash	—	—	—	—	—
65.	Rama Shankar	Muneshwar Prasad	Garsanda	Jamui	Jamui	Bihar
66.	Mahendra Prasad	Kusha Prasad	Beri	Lata Rafiganj	—	Aurangabad
67.	Udit Ram	Sri Baru Ram	Majhiaba	Balabigah (Prarya)	—	Gaya, Bihar
68.	Kamla Dubey	—	—	—	—	—
69.	Rajendra Prasad	Brahmadeo Mahato	Nidhi	Lediyari	Khiri	Allahabad (U.P.)
70.	Brajesh Kumar	Sukaran Mehta	Chandobali	Sikandarpur	Madanpu	Aurangabad
71.	Dayanand Kumar	Sri Sukaran Mehta	Chandobali	Sika Darpur (Baar)	Bhawanpur	Aurangabad, Bihar
72.	Rajeshwar Prasad	Sukar Mahto	Chandobali	Sikahdarpur (Baar)	Madanpur	Aurangabad, Bihar
73.	Sunil Hansda	Sri Runai Hansda	Buatbari	Chirkunda	Chirkunda	Dhanbad
74.	Suchand Mallick	Late hasan Mallick	Kodanita	Alyaneshwari	Kulti	Burdwan, W.B.
75.	Sant Rabi Das	Late ram barat Ram	Majhiwada	Paraiya	Pariaya	Gaya (Bihar)
76.	Sarya Prasad	Late Basud Bhagat	Pawar	Rafigun	Rafigunj	Aurangabad, Bihar
77.	Awadh Kishore	Prakash Nonia	—	—	Gaya	Bihar
78.	Bhola Nonia	Kunj Bihari Nonia	—	Kaunch	—	Gaya
79.	Ram Bhajan Nonia	Chanari Nonia	Itwa	Gajanpur	Pariya	Gaya
80.	Rajesh Kumar	Upendra Pd. Sinha	Darma	Darma	—	Aurangabad

2. This case is received from the Ministry of Labour on 15.01.1997. After notice, both parties appeared. The workman files their respective written statement on 11/13.08.1997, The management files written statement on 05.11.1999 Thereafter rejoinder and documents filed by the respective parties. One witness examined from each side as well as two documents marked on behalf of the workman as W-1 & W-2.

3. The case of the workman is that the employers engaged the concerned workmen i.e Vyasdeo Pandey and

80 other in various colliery. And they were engaged in the job which falls under prohibited category under contract Labour Act and there job are permanent in nature. And they have been working regularly since 1989 and they have put on 190 days attendance in case of underground and 240 days in case of surface in each calendar year since 1989,1990,1991,1992.

4. It is also submitted by the workman that management had brought in a co-operative society namely Koyla Khadan Sramik Seheyog Samity under whom the concerned

workmen are alleged to be working on various job under supervision, direction and control of the manager, Agent, Overman etc of the colliery.

5. The Contract awarded to the aforesaid Co-operative Society is nothing by a camouflage through which the concerned workmen are exploited and deprived of their legal dues. Therefore the concerned workman through their union requested the management for regularisation them as permanent workman but it was not heeded by the management. Thereafter Industrial disputes arose.

6. On the other hand, the case of the management is that no employer-employee relationship exists between the management and the concerned persons. Therefore the present reference is liable to be summarily rejected.

7. It is also submitted that the concerned persons advanced their claim that they are the member of a registered co-operative society named "Koyla Khadan Sramik Sahayog Samitee" and they had worked at different collieries of C.V Area as contract workers on the basis of work orders issued in the name of Co-operative Society. And some of the tenders submitted by the aforesaid Co-operative Society were accepted and work orders were issued for executing the works on the jobs for which there is no restriction on engagement of contract labour.

8. It is also submitted by the management, that the contract jobs awarded to the Co-operative Society were mainly and substantially confined to surface works of civil nature and the duration of work was for a limited period only. The Co-operative Society at no point of time could engage workmen more than 10 or 15 at a time at any colliery. The duration of engagement of contract labour hardly could be for 15 to 20 days in a quarter and the question of engagement of such contract labour on regular basis does not and cannot arise.

9. It is also submitted that the sponsoring Union could not establish before the competent authority of the Central Govt. i.e (conciliation Officer) that the workmen bearing the names appearing in the list attached to the schedule of reference had worked as contractor workers against the work order issued in the name of the Co-operative Society. The sponsoring Union failed to show any document of any work. Hence the conciliation Officer refused to refer the dispute for adjudication by Office order dated 02.02.1995. The sponsoring Union approached to the Hon'ble High Court, Patna Ranchi Bench in CWJC No. 3301 of 96 (R). The Hon'ble High Court advised the Central Govt. to refer the matter to The Tribunal for adjudication by giving opportunity to put up the case before an Industrial Tribunal.

10. The short point to be decided in this case, whether the contract workers to be regularise as workmen of BCCL or not.

11. The present contract workers No. 81 have prayed to be regularised in the colliery as workmen. The management

submitted that some of the workmen render mason and labour work of building when there is necessity and engaged through contractor. They never worked continuously or permanently in any colliery.

12. The workman witness has said, he cannot say name of all the workmen and he says that they were engaged through Co-operative Society they submitted no Identity card and no pay slip of BCCL, like other employee of BCCL. The WW-1 also submits in cross examination that "we used to get our wages from the Co-operative Society. We used to work under the supervision of the said Co-operative Society". This being the situation the workmen cannot be regularised under the management.

13. Considering the facts and circumstances of this case, I hold that the demand of the Union of S/Sh. Vyasdeo Pandey and 80 others for regularisation by the management of Chanch Victoria Area No. XII of M/S Bharat Coking Coal Limited, is not legal and justified, Hence all the workmen mentioned in the schedule are not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 3 मार्च, 2016

का.आ. 452.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 99/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/03/2016 को प्राप्त हुआ था।

[सं. एल-20012/570/2000-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 3rd March, 2016

S.O. 452.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 99 of 2001) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 03/03/2016.

[No. L-20012/570/2000-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 99 of 2001

Parties : Employer in relation to the management of
Kustore Area, M/s. BCCL

AND

Their workmen

Present :

Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the Workman : Shri S. Sharma, Rep.

State : Jharkhand Industry : Coal

Dated 23/12/2015

AWARD

By order No. L-20012/570/2000/IR (CM-1), dated 27/04/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/S BCCL, Kustore Area in not providing employment to Sri Suresh Bhuia S/O Late Bineshwar Bhuia, wagon Loader, East Bhugatdih Colliery is legal and justified? If not, to what relief the dependant is entitled?”

2. This case is received from the Ministry of Labour on 14/05/2001, After receipt of the reference, both parties are noticed. The Sponsoring Union files their written statement on 12/10/2001, The management files their written statement on 09/05/2002. One witnesses adduced from each side, And document of workman is marked as W-1 to W-7.as well as document of the management is marked as M-1 to M-7.

3. The case of the workman is that Late Bineshwar Bhuia was permanent employee of East Bhugatdih Colliery, in 1990 the concerned workman was transferred to Kustore Area Workshop . But the L.P.C. could not be send to the Kustore Auto Workshop by the management. Matter was raised before the authority of Kustore Area but the management did not sent the same. Resulting the workman was working at Kustore Auto Workshop and get the salary from East Bhugatdih.

4. Late Bineshwar Bhuia was designated as wagon Loader but he was serving the management as mechanical fitter. And he was died on 4.10.91. After the death of the workman his eldest son Shri Suresh Bhuia applied for his employment before the management of East Bhugatdih but the matter was delayed by the management of East Bhugatdih thereafter the management denied of

employment on the ground of belated case by the management of Kustore Area. Therefore Industrial Dispute arose.

5. On other hand the case of the management is that one workman named Bineshwar Bhuia was working at East Bhugatdih Colliery and his designation was Wagon Loader. In the year 1991 he was working as mechanical helper on the surface considering his health ground. He met his normal death on 4.10.1991 in the course of his medical treatment. Thereafter the wife of the deceased workman received all the legal dues in respect of the aforesaid workman.

6. Sri Suresh Bhuia is claiming employment under the management posing himself as the son of Late Bineshwar Bhuia who died on 4.10.1991 asserting the right of employment under the provision of NCWA. It is also submitted by the management that the provision of NCWA can only be taken into consideration for providing employment on compassionate ground only.

7. It is submitted that no justifiable ground exist for providing employment to the concerned person at this stage. The management did not accede to his demand on the ground of delay . It appears that the concerned person was minor at the time of death of late Bineshwar Bhuia or was not fully grown up to take up job of Miner Loader inside the mine . The concerned person failed to justify the demand for employment on compassionate ground therefore he is not entitled to any relief.

8. Short point to be decided in this reference is whether the applicant is to get job in place of deceased Bineshwar Bhuia , who died while in service as per NCWA. In the case alongwith document one witness each has been examined by the either side.

9. The management witness has disputed the identity of the applicant and says that his application has been filed delayedly and as such the applicant is not entitled to get employment and there is no harness. In the Written statement of the management Identity of the workman is also disputed but As per M-3 the name of Suresh Bhuia is mentioned as son of the deceased workman.

10. On the other hand the applicant's case, that he was minor when his father died and he is to get job.

11. Delay in filing application with proper particular is usual that should be condoned by the management . And the second point is the identity, the workman however has not filed any identity proof but his name is found entered in service excerpt marked as Ext- M-3 . The M-3 is prepared on 30.05.1987 on that point of time Sri Suresh Bhuia was 13 years old and on the date of death of the deceased workman, he was about 17 years old.

12. As per Ext. M-3 the date of Birth of the deceased workman is 1939 hence the service tenure is ended on 1999. Sri S.S.Roy (MW-1) says in chief that in the year

1994-95, one Suresh Bhuia who claimed to be the son of deceased employee submitted an application before the management for providing him employment but in cross examination of the same, the MW-1 being Sr. personal Officer say's "There exists a provision in NCWA which provides that after the death of an employee during his service tenure his Dependant would be provided employment in his place. No period of limitation has been prescribed for submitting any application for providing employment in place of deceased workman."

13. Considering the facts and circumstances and as per evidence of the management I hold that the action of the management of M/s BCCL, Kustore Area in not providing employment to Sri Suresh Bhuia S/o Late Bineshwar Bhuia, wagon Loader, East Bhugatdih Colliery is not justified, Therefore the management is directed to take the workman in job verifying his identity proof.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 3 मार्च, 2016

का.आ. 453.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इन्दुस ट्रांसलाईनर विंग्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 50/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/03/2016 को प्राप्त हुआ था।

[सं. एल-11012/12/2014-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 3rd March, 2016

S.O. 453.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata (Ref. No. 50 of 2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indus Transliner Wings and their workmen, which was received by the Central Government on 03/03/2016.

[No. L-11012/12/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 50 of 2014

Parties :

Employers in relation to the management of
M/s. Indus Transliner Wings

AND

Their workman

Present :

Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the : Mr. R.N. Majumder, Ld. Counsel
Management with Mr. S. Bhattacharjee,
Ld. Counsel on behalf of
Air India Ltd.

None on behalf of M/s. Indus
Trans Liner Wings.

On behalf of the : None
Workmen/union

State : West Bengal

Industry : Civil Aviation

Dated: 28th January, 2016

AWARD

By Order No.L-11012/12/2014-IR(CM-I) dated 04.06.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"(I) Whether the action of the Management of Air India Ltd., Kolkata in terminating 30 numbers of contractual workmen engaged by Ms. Indus Transliner Wings (As per Annexure-I) is legal and justified? To what relief the workmen are entitled to?
(2) Whether the action of the Management of Air India Ltd. for not considering the candidature for appointment of Ramp Driver in their subsidiary M/s Air India Air Transport Services Ltd. (A wholly owned subsidiary of Air India Ltd.) is legal and justified? To what relief the concerned workmen are entitled to?"

Annexure – I

- | | |
|------------------------|----------------------------|
| 1) Kalpataru Maity | 16) Fatik Biswas |
| 2) Biplab Biswas | 17) Biswajit Roy Chowdhury |
| 3) Sandip Roy | 18) B.s. Rao |
| 4) Gobinda Roy | 19) M. Rahaman |
| 5) Brindabon Mukherjee | 20) M.d. Washim |
| 6) Sanjay Thakur | 21) Tapas Guine |
| 7) Susanta Panja | 22) Bidduit Sarkar |
| 8) Somnath Jana | 23) B. Poddar |
| 9) James Sarkar | 24) Ashoke Paswan |
| 10) Prasenjit Panday | 25) Arun Paswan |
| 11) Sankar Singha | 26) Lalbahadur Choudhury |
| 12) Narayan Das | 27) G. Balmiki |
| 13) Bappa Datta | 28) B. Sahani |
| 14) Tarak Das | 29) Manash Mrik |
| 15) Bittu Mukherjee | 30) Biswanath Paul |

2. When the case is taken up for hearing, none appears either on behalf of the union or on behalf of M/s. Indus Transliner Wings though the Airport Director, Air India Ltd. is represented by its Ld. Counsel. It appears from the record that the union is not appearing for the last 5 consecutive dates. Nor did it take any step to proceed with the case.

3. In view of the above, it may reasonably be presumed that the union at whose instance the instant reference has been initiated, is not at all interested to proceed with the case. So, no fruitful purpose will be served in keeping the matter pending.

4. Considering the above facts and circumstances, present referenced is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 28th January, 2016

Justice DIPAK SAHARAY, Presiding Officer

नई दिल्ली, 7 मार्च, 2016

का.आ. 454.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 11/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/03/2016 को प्राप्त हुआ था।

[सं. एल-40012/55/2007-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 7th March, 2016

S.O. 454.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 11 of 2008) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workmen, which was received by the Central Government on 07/03/2016.

[No. L-40012/55/2007-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE SRISHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT,
KANPUR**

Industrial Dispute No. 11 of 2008

Between :

Sri Om Pal Singh,
Son of Sri Veer Pal Singh,
Village – Chgandpur, Post Nawabganj,
District Farrukhabad.

And

Sub Divisional Officer (Phones)
Bharat Sanchar Nigam Limited,
Mainpuri.

AWARD

1. Central Government, Mol, New Delhi vide notification No.L-40012/55/07-IR (DU) dated 11.12.2007 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Telecom District Manager, BSNL, Mainpuri, Sub Divisional Officer (Phones) BSNL Bhogaon, District Mainpuri, in terminating the services of their workman Om Pal Singh with effect from 16.05.2003 is legal and justified? If not to what relief the workman is entitled?

3. The case of the workman in short is that he was appointed by the opposite party as Lorry Driver to drive the lorry No. U.P. 84-A/2727 existing in the name of the opposite party. The post against which the worker was appointed was regular and permanent. The worker was also maintaining Log Book of the lorry for the said vehicle and he use to fill up the same in his own handwriting. It is also the case of the worker that he continuously worked for 240 days as lorry driver in each calendar year during the course of his employment. The opposite party without assigning any reason abruptly terminated his long service w.e.f. 16.5.03. The opposite party at the time of dispensation of the service of the worker neither paid notice, notice pay or retrenchment compensation, therefore, the action of the opposite party cannot be sustained in the eye of law. The opposite party has also breached the provisions of section 25N of the Act hence the termination of the service of the applicant is highly illegal arbitrary and against the principles of natural justice. The opposite party instead of making payment on scale rate allowed the worker a lump sum amount of Rs.2500/- per month as wages though opposite party was not entitled to act in such a manner being a model employer of the company. The action of the opposite party is also in breach of section 25F of the Act.

4. On the basis of above allegations, the worker has prayed for his reinstatement in the service of the opposite party with full back wages, continuity of service and with all benefits attached with the post.

5. The opposite party in its reply has alleged that the worker Om Pal Singh was engaged a casual driver on contract basis at the fixed rate as and when required. The worker was never appointed as lorry driver by any authority

of the opposite party and he was paid contractual amount against the work done from the contingent funds for office maintenance and other misc. expenses through vouchers. It is denied that the worker was ever paid any wages by Sub Divisional Officer (Phones) Bhogaon. There never existed the relationship of employer and employee between the opposite party and the worker as worker was never on the rolls of the opposite party as also he never signed any attendance register. Worker was never issued any appointment letter by the opposite party for the post of lorry driver. Worker did not hold any post and it is also denied that he had worked against any regular and permanent vacancy. Opposite party has denied that it had ever terminated the services of the worker either from 16.5.03 or from any other date, therefore, question of his termination does not arise. The engagement of the worker came to an end automatically. The present claim of the worker is highly belated. Worker is simply trying to gain back door entry in the employment of the opposite party. Worker had no lien against any regular and permanent post. Therefore, on the basis of above pleadings, it is alleged by the opposite party that the claim of the worker is devoid of merit and is liable to be rejected.

6. Worker has filed rejoinder but nothing new has been given therein except reiterating the facts already pleaded in the claim petition.

7. The worker by means of his affidavit paper No.10/2 has filed certain documents in the shape of annexure I to IV showing details of his working days for the year 2000 to 2003. Worker has also filed photocopy of payment voucher as Annexure V with his affidavit. He has also filed photocopy of educational qualification and registration certificate in the form of Annexure VI and VII. All these documents will be discussed at the appropriate stage.

8. Worker has filed his evidence on affidavit and he failed for his cross examination hence opportunity was closed. But subsequently order dated 12.12.12 was recalled by order dated 13.01.15 and the witness was allowed to appear in the witness box for his cross examination. Witness has examined himself as W.W.1 in support of his claim.

9. Opposite party examined one Sri Laxhan Singh Chauhan, Ex. Sub Divisional Officer, Bhogaon as M.W.1.

10. I have heard the arguments of both the parties at length and have also perused the whole record carefully.

11. W.W.1 Om Pal Singh has filed his evidence on affidavit and supported his case. In his cross examination he deposed that there was no agreement in between him and the employer for appointing him as lorry driver. He was also not given any appointment letter. There was no advertisement for the post nor he had given any application for his appointment and he was engaged by SDO Sri UC

Mishra and payment of wages was made through vouchers. His attendance was not taken on attendance register but he was maintaining log book of the vehicle which was also signed by the concerned officer. Lorry No. UP84A-2727 was taken back from him on 15.5.03. He was not given any letter of termination and he has filed documents to show that he had worked for more than 240 days continuously. He is working as driver on contract basis from 2011 in Delhi Transport Corporation. His payment was done monthly.

12. On behalf of management M.W.1 Ram Laxhan Singh Chauhan deposed that services of worker were taken as and when required and he was never appointed and payment was done through contingency. He had never worked against any regular and permanent vacancy. He was disengaged as vehicle was off route. He has admitted the log book filed by the worker and deposed that these papers belong to the department. He further deposed that there was no written contract with the worker as per his best knowledge.

13. A perusal of log book paper no.10/9-68 which is admitted by the management witness shows that it is maintained from 1.09.2000 to 15.5.03 and the relevant entries made by the worker in his own hand writing and the same are countersigned by the officer of the management.

14. It clearly establishes continuous working of worker during the above period and also establishes that he had completed 240 days of continuous working preceding 12 calendar months from the date of his termination.

15. Worker has also filed copies of payment vouchers which are paper no.10/69-99 which establish that worker was receiving payment of wages month wise through payment vouchers.

16. From the above discussions, I come to the conclusion that worker Om Pal Singh worked as casual driver with the opposite party from 11.09.2000 to 15.05.2003 and has completed 240 days of continuous working and he was retrenched in breach of section 25F of the Act without giving any notice, notice pay or retrenchment compensation, therefore, his retrenchment is bad in law and he is liable to be reinstated with full back wages as was drawn by him at the time of his retrenchment, but he will not be entitled for his back wages beyond December, 2010 as he himself has admitted that he is working as driver on contract basis with Delhi Transport Corporation, Delhi from the year 2011.

17. Accordingly the worker is reinstated in the service with back wages and continuity of service in the above terms as mentioned in Para 16 of the award and the reference is therefore, answered in favor of the worker and against the management.

SHUBHEDRA KUMAR, Presiding Officer

नई दिल्ली, 7 मार्च, 2016

का.आ. 455.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनटीपीसी दिबियापुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 19/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/03/2016 को प्राप्त हुआ था।

[सं. एल-42011/129/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 7th March, 2016

S.O. 455.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 19 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the NTPC, Dibiyaipur and their workmen, which was received by the Central Government on 07/03/2016.

[No.L-42011/129/2011-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
KANPUR**

Industrial Dispute No. 19 of 2012

Between :

The General Secretary,
NTPC Employees Union,
P.O. Dibiyaipur,
District Auraiya

And

The General Manager,
NTPC Dibiyaipur,
Auraiya.

AWARD

1. Central Government, Mol, New Delhi, vide notification No.L-42011/129/2011-IR (DU), dated 03.02.2012 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of NTPC Dibiyaipur, Auraiya in not releasing promotion to its workmen S/Sri Uma Shaker Yadav, P. K. Sharma and

M. Janardan is legal and justified? What relief the workmen are entitled to and from which date?

3. The case in short as set up by the union on behalf of the workmen named in the reference order is that Sri Uma Shanker Yadav, P. K. Sharma and M. Janardan were due for their respective promotion from W-8 to W-9 with effect from 1st July, 2009 and that all these workers are the members of the union. It is also alleged that all the workers have fulfilled the required eligibility as per the circular No. 660/2009 and as per policy there is no constraint of vacancy within the particular cluster and the workers involved in the present dispute belongs to cluster -C. Despite representations the management did not promote these workmen and has indulged in an unfair labor practice. All these workers have completed more than 3 years of service in grade W-8 as required in Para 1.2 of the said circular and they were considered for promotion by D.P.C. and their names were published in the list dated 25.01.2010. The name of P.K. Sharma, Uma Shanker Yadav and M. Janardan appeared at serial no.3, 10 and 16 out of total 17 employees selected by DPC-2009 for promotion from W-8 to W-9 category. Worker Uma Shanker Yadav was served with a charge sheet on 24.06.09 and punishment was awarded. As there was inordinate delay in the conclusion of the inquiry, worker Uma Shanker Yadav moved before the Hon'ble High Court, Allahabad, thereupon the inquiry was concluded against the worker Sri Uma Shanker Yadav and appeal preferred by him which was not considered whereupon review petition was moved which is still pending. Again on 19.08.09 second charge sheet was issued on account of being found absconding during duty by one hour at work which was issued on false and frivolous grounds just in order to harass the workman. This entire attempt on the part of the management is deliberate and with malafide intention just to prolong the promotion with a view to harass the worker Uma Shanker Yadav. This domestic inquiry and delay are the part of strategy and design of the management and under the garb of which the promotion of Sri Yadav was not considered despite the fact that he was entitled for the promotions during the year 2009, 2010, 2011 and 2012. Later in the year M. Janardan was declared promoted in July, 2010 but Uma Shanker Yadav and P. K. Sharma were not promoted in the year 2009, 2010, 2011 and 2012 which shows the adamant attitude and high handedness of the management and the management is causing mental and financial loss to the workmen for no reason. Therefore, the said workers are entitled to the promotion without delay from July, 09 in Grade W-9 and after 3 years in 2012 in Grade W-10 for which they are entitled and the same should be granted with all consequential benefits.

4. Lastly it is prayed that that Sri Uma Shanker Yadav, P. K. Sharma and M. Janardan be promoted to grade W-9 from W-8 from July, 2009 and from July grade W-10 from W-9 with all consequential benefits.

5. Management has filed its reply denying vehemently the claim of the union by asserting that the employer had never adopted arbitrary policy and had violated the law promoting to the next grade. Sri Uma Shanker Yadav is eligible for promotion from W8 to W9 in DPC 2009 as per NTPC promotion policy along with other eligible candidates. The recommendation of DPC was kept in the sealed cover by the DPC itself due to pending disciplinary cases and he was awarded penalty on 17.03.2011. Consequent to the above penalty he was gain considered for promotion in DPC 2012 as per NTPC Promotion policy. DPC has considered his case for promotion along with other eligible candidates. Sri Yadav was not considered for promotion by the DPC in 2012. It is admitted by the management that the other two workers were considered for promotion by the DPC 2009 but they were not found fit for promotion by the DPC as Sri P. K. Sharma W-8 and Sri M. Janardan W-8 were considered for promotion by DPC along with other eligible candidates. The DPC 2009 has not recommended the above employees for promotion as per NTPC Promotion policy. M. Janardan W-8 was recommended for promotion by DPC 2010 and was promoted. Sri P. K. Sharma W-8 was considered in DPC 2010 for promotion but as per DPC 2010 the recommendation of DPC has been kept in the closed envelop due to pending court case. It is denied that promotion of Sri P. K. Sharma was delayed in 2005. It is alleged that promotion is the administrative function of the management and there are several norms for promotion and the management has its own decision and management has also considered the work, conduct, merit, suitability and seniority.

6. Lastly it is stated that the workers are not entitled for any benefit or relief in this reference.

7. Union has also filed rejoinder but nothing new has been mentioned therein except reiterating the facts already alleged in the claim petition.

8. Both sides have also filed documents which shall be discussed at the appropriate stage.

9. Whereas union has examined Sri Uma Shanker Yadav as W.W.1, management has examined its witness Sri Manoranjan Sarangi as M.W.1.

10. I have heard the arguments of the parties at length and have also perused the whole record carefully.

11. It appears that the reference sent by Mol, New Delhi, is to consider the action of the management of NTPC in not releasing promotions to its workers S/Sri Uma Shanker Yadav, P. K. Sharma and Sri M. Janardan is legal and justified and if not to what relief the workers are entitled and from which date.

12. In the reference General Secretary, NTPC Employees Union has been made party which has filed the claim petition on behalf of the workers with the prayer that all the three workers be promoted to Grade W-9 from W-8 from

July and further to Grade W/10 from Grade W-9 from July, 2012.

13. In this case claim petition has been filed by General Secretary, NTPC Employees Union, but General Secretary has not appeared in witness box to depose on behalf of all the three workers but only one P. K. Sharma one of worker alleging himself to be joint secretary has given his evidence, nor he has filed any authorization from general secretary permitting him to represent the case of all the three workers. In his cross examination W.W.1 P. K. Sharma has deposed that he is joint secretary and has been authorize to represent the case of all the three workers which he can file but he has not filed any such authority. He has deposed in his cross examination that he cannot say about both the above worker whether they will give any evidence but both of them have been given promotion. He further added that Uma Shanker Yadav has been promoted from W-8 to W-9 in 2013 and in the same year simultaneously he has been promoted from W-9 to W-10. As regards Janardan he has stated that he has been promoted from W-8 to W-9 in 2010. It is further added that promotion of Uma Shanker Yadav has been made effective from 2009.

14. On behalf of management affidavit of M. W. 1 Sri Manoranjan Sarangi, is filed wherein it is stated that Sri U. S. Yadav and Sri Janardan have already been promoted as per promotion policy of the company as such their cases are not considered at this stage by the tribunal as both of them have not come forward to contest their claim nor they have adduced any evidence in the case.

15. In his cross examination he has stated that promotion of Sri Yadav is made effective from 01.07.09 from W-8 to W-9 grade and second promotion of Sri Yadav to grade W-10 was done from 01.07.2013. He has given reasons for not promoting Sri U. S. Yadav in the D.P.C. held in 2009 that one departmental inquiry was pending against him. He further added that Sri Yadav and Janardan have already been promoted.

16. From the above discussions regarding promotion of Sri Yadav and Sri Janardan, it appears that they have not challenged the date of their promotion by appearing in person in witness box nor their case has been contested by the secretary of the union.

17. The Tribunal is, therefore, of the opinion, the Sri U. S. Yadav and Janardan appears to be satisfied after their promotion and therefore, they have not given any evidence by challenging the date of their respective promotion. Thus no relief can be granted to U. S. Yadav and Janardan.

18. Now the case of Sri P. K. Sharma is left to be examined in the light of reference order.

19. It is necessary to mention that despite order of the tribunal passed on 10.02.2015 on the application of workman paper No.11/1-2 for summoning mother policy of promotion and proceedings of DPC conducted in 2009 to

2011 and report and result in respect of P K Sharma kept under sealed cover, management did not file proceedings of DPC and result in respect of Sri P K Sharma kept under sealed cover. Management did not file proceedings of DPC and report of DPC by which result regarding P K Sharma is kept under sealed cover. In this regard M.W.1 Sri Manoranjan Sarangi has admitted that on the application of the union records were summoned but minutes of DPC are not filed by the management. He has further deposed that there is no mother policy but management has filed its promotion policy. It appears that management has deliberately withheld the documents and has not filed the minute/proceedings of DPC of any year which was very relevant document to be seen by the tribunal to come to the conclusion as to on which grounds promotion of Sri P K Sharma was refused in 2009 and on what reasons it was kept under sealed cover in subsequent years.

20. The main reason shown by M.W. for not promoting to Sri P K Sharma from W-8 to W-9 in the year 2009 is that performance of Sri Sharma was not up to the mark in preceding three years. It was entered in ACR.

21. It has been argued by the representative for the management that reference is bad as no specific date of promotion is mentioned in the reference order. But it is admitted to both the parties that promotion to Sri P K Sharma was not recommended by DPC held in 2009 for his promotion to Grade W-9 from Gr. W-8.

22. Although his name was considered for promotion by DPC 2009 and 2010 along with other candidates and name of Sri P K Sharma was not recommended by DPC 2009 and his promotion was kept in sealed envelope by DPC 2010, therefore, mentioning of date of promotion in the reference has become redundant and it cannot be accepted that reference is bad on account of non-mentioning of date of promotion in the reference order.

23. In the written statement filed by the management it is stated in para 6 that promotion is the administrative function of the management and there are several norms of promotion. Management has also considered the work conduct, merit, suitability and seniority as per promotion policy of the company. In this regard worker P K Sharma has filed review of promotion policy for employees in workman category dated 24.08.09 which is paper No. 19/9-11, wherein eligibility period for promotion in grade W-9 and W-10 is given three years.

24. Management has relied upon promotion policy paper No. 20/53-64 wherein several circular of previous years from 1982—11 are compiled and this policy also includes promotion policy of 2009 wherein in para 3.2.1 at page 20/54 it is mentioned that promotion to next higher grade shall also be subject to the condition that workman is not rated unsatisfactory in any of the performance in the appraisal report considered for promotion, which impliedly means that if in appraisal report workman is rated unsatisfactory

his promotion can be refused. But contrary to it M.W.1 Sri Sarangi DGM Human Resource has stated in his cross-examination that in the DPC ACR of 3 years is considered and no adverse ACR was given to all the three employees nor ACR was communicated to them which means that ACR of P K Sharma was not adverse during these three years. He has also deposed that promotion of Sri P K Sharma was not recommended by DPC as his performance was not up to the mark for continuous three years and entry was made in ACR. He goes on to depose that according to promotion policy an employee should be informed for his poor performance and again he deposed that no information is given to the employee if his performance is not up to the mark and performance is reviewed orally and not in writing and in provision is there for rating the workers but it is not mentioned that the performance of the worker is not up to the mark. The statement of M.W.1 appears to be self contradictory on several points as he himself admitted that no adverse CR given or communicated to Sri Sharma.

25. Management has also not filed any such relevant document to show that performance of Sri Sharma was not up to the mark and also not filed any document to establish that rating of the worker Sri Sharma was below required rating for promotion. It was the burden on the management to have filed relevant documents especially report of DPC for the year 2009 to establish that promotion of Sri Sharma was not recommended due to less rating and not performing up to the mark. Management has not filed a chit of evidence to establish its case and only produced M.W.1 Manoranjan Sarangi, DGM, Human Resource, who has given his oral evidence only which is also shaking on several points. His evidence is not supported by any documentary documents available with the management and considering that no adverse ACR was given to Sri P K Sharma as admitted by M.W. 1, there cannot be any justification for management for refusing the promotion of P K Sharma from W-8 to W-9 in the DPC held in the year 2009, therefore, action of the management of NTPC in not releasing promotion to Sri Sharma in the DPC conducted in 2009 is held to be unjustified and he is entitled for his promotion from July 2009 in grade W-9 from Gr. W-8.

26. As far as promotion of Sri P K Sharma from W-9 to W-10 with effect from July 12 is concern, M.W.1 Sri Sarangi in his evidence has deposed that result of promotion of Sri P K Sharma was considered in 2010 and recommendation of DPC is kept in close envelope due to pendency of criminal case No. 2925 of 2007 pending in the Court of Civil Judge (Jr. Div.) Dudhi Sonebhadra. This fact is also admitted by the worker Sri P K Sharma who in his cross-examination has stated that a criminal complaint is filed by one Sri Neeraj Maheshwari under section 138 of N.I. Act and under section 420 of I.P.C. against him and his wife which is still pending and numbered as case no.2909 of 03 in which he has moved discharge application. Management has also filed photocopy of certified copies through list 20/1 and a perusal

of which reveals that Neeraj Maheshwari has filed criminal complaint against the worker and his wife in which by the order of the magistrate dated 16.01.04 cognizance is taken under section 420 IPC and summons were issued against the worker and his wife. It also appears that worker and his wife has preferred application under section 482 Cr.P.C. numbered as 2120 of 2004 before the Hon'ble High Court for quashing the criminal proceedings which was dismissed by order dated 2.12.13 by Hon'ble High Court and opportunity was given to the applicant to move application for discharge. In the said case before the Hon'ble High Court contention of the learned counsel of the applicant that no case against the applicant is disclosed and the present prosecution has been instituted for harassment.

27. Management has also filed copy of promotion policy dated 2.12.93, wherein certain provisions were revised in para 7.3. Revised provisions are that "no employee under suspension or where the charge sheet has been issued or where criminal case is pending against him shall be promoted unless he is unconditionally reinstated or exonerated".

28. In para 7.3.1 it is provided that the recommendation of CPC shall be kept in sealed cover and in para 7.3.3 it is provided that if the employee concern is finally acquitted and is fully exonerated the sealed cover recommendation shall be opened.

29. Therefore, according to above discussions management has kept the recommendation of subsequent DPC under sealed cover as criminal case is pending against worker Sri P K Sharma, there appears no illegality in it in keeping the recommendation of DPC under sealed cover.

30. Worker contended that pendency of criminal complaint cannot be treated as prosecution against him as it is not a police case. I do not find any force in this contention as the worker himself filed an application under section 482 of Cr.P.C for quashing the criminal proceedings/prosecution.

31. Worker has also contended that in accordance with para 3.11.5 of promotion policy paper No.20/53-64 that in the event of delay in the conclusion of criminal prosecution which is not concluded after expiry of two annual CPC from the date of meeting of first CPC, the appointing authority may review the case of employee. It is argued that as court was vacant and delay criminal proceedings were not due to action of employee, his case should be reviewed by the appointing authority but as it appears that the provisions are not mandatory and it is the sole discretion of appointing authority to review the case of worker or not and the tribunal is not empowered to give any direction on this point. In this regard it can be held that promotion of Sri P K Sharma has not been refused by subsequent DPCs and his promotion is only differed due to pendency of criminal case and result of DPC is kept under sealed cover in subsequent DPCs.

32. Worker has cited case law of Hon'ble Apex Court 1991 AIR 2010, Union of India versus K V Jankiraman etc. But this citation has no application in this case as facts of present case differs.

33. In view of above discussions, it is held that the action of the management of NTPC in not releasing promotion to Sri P K Sharma in the DPC 2009 is neither legal nor justified and the workman Sri P K Sharma is entitled to the promotion from W-8 to W-9 from July 2009. As regard future promotion from Gr.W-9 to W-10 DPC has rightly kept the result of Mr. Sharma in sealed cover due to pendency of criminal proceedings against him.

34. As other workers Sri Uma Shanker Yadav and N Janardan have not come to prove their case probably for the reasons that they have already promoted, therefore, they are not entitled for any relief pursuant to the reference order.

35. Reference is answered accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 8 मार्च, 2016

का.आ. 456.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/41/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/03/2016 को प्राप्त हुआ था।

[सं. एल-40012/461/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th March, 2016

S.O. 456.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/41/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 08/03/2016.

[No.L-40012/461/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/41/2001

Shri Jainarayan Methal
S/o Shri Devial Methal,
Vill Awan, Tehsil Raghogarh,
Guna

...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
MP Circle,
Bhopal

Telecom District Engineer,
Guna

...Management

AWARD

Passed on this 11th day of February, 2015

1. As per letter dated 18-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/461/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom Distt.Engineer, Guna in terminating Shri Jainarayan Methal S/o Shri Devial Methal in the year 1999 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/7. Case of Ist party workman is that he was initially appointed in Telegraph department as daily wage Mechanic on 1-10-92. He was continued in service without any break till 31-3-99. His services were terminated without notice, he was not paid one month salary in lieu of notice or retrenchment compensation. That he worked continuously with 2nd party for 6 years 5 months. He completed more than 240 days continuous service. 2nd party failed to prepare list of workman of his category and display on notice board as per Rule 77 of ID Central Rules 1957.

3. That 2nd party not considered his case for appointing in service as per the circular dated 1-11-95 issued by the department as per the directions by Apex Court in AIR-1987-SC-2342. Workman has also alleged that he was not given proper category of the workman, his wages were not properly paid. He was not absorbed in service. That he was not given any employment as per Section 25 H of ID Act though employees junior to him were provided employment. That after termination of his service, workman was unemployed. He borrowed money for survival of his family. Juniors were continued in service. 2nd party has committed violation of Section 25-G,H of ID Act. On such ground, workman prays for his reinstatement.

4. 2nd party filed Written Statement at Page 5/1 to 5/2 opposing claim of workman. 2nd party denies that workman was appointed in department on 1-10-92. It is submitted

that since 1985, the engagement of casual daily wagers was bad. The workman was not posted on daily wages in 1992. 2nd party further submits that for petty works in department, few labours were engaged. After completion of petty works, such labours used to be retrenched automatically. Workman had not completed 240 days continuous service. There was no question of termination of his service in violation of Section 25-F of ID Act. violation of Rule 77 of principles of last come first go has been denied. That judgment in case of casual labours by Hon'ble Supreme Court cannot be applied to workman. He is not eligible as workman has not completed 240 days continuous service. On such grounds, 2nd party prays for rejection of claim of workman.

5. After the statement of claim was amended about workman was unemployed after termination of his service, additional Written Statement is filed by management denying that the workman was unemployed. The service of workman commenced in morning and automatically ended on completion of the day.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|----------------------|
| (i) Whether the action of the management of Telecom Distt.Engineer, Guna in terminating Shri Jainarayan Methal S/o Shri Devial Methal in the year 1999 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final orders. |

REASONS

7. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Workman also alleged violation of Section 25-G,H of ID Act. Juniors were continued in employment. He was not allowed employment by department. Workman filed affidavit of his evidence. Workman has stated that from 1-10-92, he was working on daily wage. He had worked more than 240 days continuous service. He acquired temporary status. He submitted application for granting temporary status, his services were orally terminated on 31-3-99 without notice, he was not paid retrenchment compensation. In his cross-examination, workman says the post on which he was working was not advertised, his name was not sponsored through Employment Exchange. Appointment letter was not given to him. he was working all the day in the year, he was getting holiday during Diwali. He was not engaged for petty work. He was doing work of laying cables. He was paid wages for his working days. He claims ignorance of circular dated 10-9-93. Said circular is not produced on record. Terms of reference doesnot pertain to the denial of regularization to the workman therefore above said circular

cannot be said relevant for deciding dispute between parties.

8. Management filed affidavit of evidence of Shri Gajendra Singh Sengar. His evidence is on point that since 1985, engagement of daily wagers is prohibited. Workman was not appointed as labour on 1-10-92. He not completed 240 days continuous service. In his cross-examination, management's witness says during 1992 to 2000, he was not acquainted with the workman. Shri Kashiram, Aditya Narayan Chourasia and Gokul Prasad were working as Lineman. That the workman did not work in the department. It was told by him after perusing legal file in the case. Management's witness has no personal knowledge neither any office record is produced. In para 12 of Written Statement, it is pleaded that for petty works, few labours were engaged. After completion of paid works, the labours engaged were automatically retrenched. The document Exhibit W-1 shows that the labours were engaged on daily wages be immediately discontinued. In cross-examination of workman, it is not challenged that the workman was working in the department. I do not find reason to disbelieve evidence of workman. the application for production of document was submitted by Ist party on 19-9-07. In reply filed to said application dated 26-6-09, it is contented that workman was only engaged for petty work. Workman was neither appointed nor retrenched by department. The documents about engagement of workman is not produced. 2nd party has supplied material documents. The evidence of workman therefore cannot be outright rejected. From evidence, it is clear that workman completed more than 240 days continuous service. His services are terminated without notice in violation of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Negative.

9. **Point No. 2-** In view of my finding in Point No.1 Workman was terminated in violation of Section 25-F of ID Act, question arises whether workman is entitled for reinstatement with backwages. Considering the workman was not issued appointment letter, he was engaged on daily wages during the period 1-10-92 to 31-3-99, relief of reinstatement would not be appropriate.

10. Learned counsel for workman Shri N.K.Salunke relies on ratio held in

Case of Ashok Kumar Sharma Versus Oberoi Flight Services reported in 2010(1) SCC-142. In above case, workman had admitted guilt of carrying 30KLMs soup spoons illegally in his shoe. Order of dismissal was issued without conducting enquiry, compensation Rs.60,000/- was enhanced to Rs. 2 Lakhs.

The facts of present case are not comparable. Workman was not given appointment letter. Considering the workman was continuously working from 1992 to 1999, compensation Rs. 75,000/- would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Telecom Distt.Engineer, Guna in terminating Shri Jainarayan Methal S/o Shri Devlal Methal in the year 1999 is proper and legal.
- (2) 2nd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2016

का.आ. 457.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार व्हीकल फैक्ट्री, जबलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/292/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/03/2016 को प्राप्त हुआ था।

[सं. एल-42012/192-193/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th March, 2016

S.O. 457.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/292/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Vehicle Factory, Jabalpur and their workmen, which was received by the Central Government on 08/03/2016.

[No. L-42012/192-193/96-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/292/97

Shri Suresh Chandra Dongre,
Qr. No. 2346, Type-II,
Sector-1, Vehicle Factory Estate,
Jabalpur (MP)

Shri Sarjuram Yadav,
In front of Gyan Bharti School,
Ganga Maiya, Vehicle Factory Estate,
Jabalpur

...Workman

Versus

General Manager,
Vehicle Factory,
Jabalpur (MP)

...Management

AWARD

Passed on this 19th day of February, 2016

1. As per letter dated 14-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/192-193/96-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Vehicle Factory, Jabalpur in compulsory retiring Shri Sarjooram Yadav, fitter (auto), H.S.Gr.II and Shri Suresh Chandra Dongra is legal and justified? If not, to what relief the workmen are entitled to?”

2. After receiving reference, notices were issued to parties. Workman submitted statement of claim at Page 3. Case of Ist party workman is that enquiry was not properly conducted. He was not given opportunity for his defence. Documents were not supplied. The findings of Enquiry Officer are perverse. Misconduct is not alleged is not proved. On such ground, workman prays for his reinstatement.

3. 2nd party filed Written Statement at Page 5/1 to 5/2 opposing claim of workman. 2nd party submits that punishment of compulsory retirement was imposed against workman after conducting enquiry. Proper procedure was followed. Workman was given opportunity for his defence. Relevant documents were supplied to workman. Enquiry Officer submitted report. Charges against workman are proved. Considering gravity of offence, punishment of compulsory retirement is imposed. Action of the management is proper.

4. As per order dated 26-6-2015, enquiry conducted against workman is found proper and legal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--------------------|
| (i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings? | In Negative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order |

REASONS

6. As per order dated 26-6-2015, enquiry conducted against workman is found legal. Question arise whether

charges/misconduct alleged against workman are proved from evidence in Enquiry needs to be decided considering evidence in Enquiry Proceedings. The memorandum issued to workman is at Page 14 of the Enquiry Proceedings. The charge/ misconduct alleged against workman pertains to misconduct and indulging while on duty conduct unbecoming of Government Servant. Workman had pleaded not guilty of the charges. The evidence of management's witness Shri B.S.Parihar Security Guard pertains to his signature on envelope. The witness confirmed his signature one packet No. 160 was shown by Enquiry Officer. Witness admitted his signature on it. Witness says articles were not sealed in his presence. When the envelope was opened, 2 satta patta were signed by him. Witness was unable to tell the detailed amount recovered with alleged Satta patta. The CSE in his further cross examination says that CSE told that in that it was satta patti. The witness confirmed that amount of Rs. 52/- & Thakur was written on the patti. In his cross-examination by Defence Assistant, witness admits that single number is written on patti. The witness claims ignorance names of how many persons were written on the patti. Witness Shri Singh Security Supervisor in his evidence says that Satta patti and amount Rs.462.50 was recovered from workman Shri Surjoram after his personal search. Workman on interrogation disclosed that he was receiving amount. Mr. S.C.Dongra was writing the Sattapattis. In his cross-examination, above witness says he had not seen writing Satta patti by the workman. In reply to Q.8, witness says he did not remember what was written in Satta patta. He had not seen persons paying amount to the workman. In reply to Q.11 witness says how satta patti are identified. In 2 pattis, numbers were written therefore he felt these were satta pattis. In reply to Q.20, witness says Shri Dongra had produced Satta patti before search was taken. Any other articles were not recovered. In reply to Q.22, witness says amount was recovered from workman. He did not see Shri S.C.Dongre writing Satta Patti. Witness No.3 Manhar lal in his evidence says that workman Surju ram had disclosed he was working for 5 % with Mr. Dongra. The Sattapatti was seized at Gate No.1. the evidence of management's witnesses 4,5 is on the point of seizure of satta patthi. They did not see workman writing satta patti. In his cross-examination, PW-5 says security staff did not ask two satta pattis only he was asked to accompany and he signed on blank paper. The incident was not reported to police about offence, management itself taken action alleging misconduct of satta gaming. Satta patti is kept in envelope finds single number written, name of any person offering Satta is not written in it. How wagering are betting were offered is not clear from those satta patti. The evidence about writing satta patti is not consistent. The evidence is clear that witnesses have not seen workman receiving amount or writing satta. The evidence shows that Shri Dongra was writing Satta patti is also not consistent. Therefore the charge alleged against

workman indulging in Satta activities under Section 4 of Public Gambling Act 1867 while on duty cannot be proved from evidence in Enquiry Proceedings. For above reasons, I record my finding in Point No.1 in Negative.

7. **Point No. 2-** In view of my finding in Point No.1 charge against workman is not proved. The punishment of compulsory retirement imposed against workman is illegal and deserves to be set- aside. Accordingly I record my finding in Point No.2 in Negative.

8. Management has produced cash Rs.462.50 and 2 alleged Satta patti. The same was opened. As workman is denying seizure of those articles from him, the management has produced all those articles. The same requires to be returned to the management. In affidavit of evidence filed by workman, his age is shown 62 years. As he has already attained age of superannuation 2 years before filing his affidavit of evidence, in view of my finding in Point No.1 that charges are not proved, workman deserves to be granted wages/ salary from the period of his order of retirement till date of his superannuation.

9. In the result, award is passed as under:-

- (1) The the action of the management of Vehicle Factory, Jabalpur in compulsory retiring Shri Sarjooram Yadav, fitter (auto), H.S.Gr.II and Shri Suresh Chandra Dongra is not proper and legal.
- (2) Punishment of compulsory retirement is set-aside. As workman has already attained age of superannuation, management shall pay salary to the workman for period of compulsory retirement till date of superannuation within 30 days of publication of award. In case of default, amount due shall carry 9 % interest from date of award till its realization.
- (3) Amount Rs.462.50 paise found in the envelope produced in the case be returned to the management.

R. B. PATLE, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 458.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर.के. मार्बल लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 02/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-29012/27/2009-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 458.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2010)

of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. R.K. Marble Ltd. and their workman, which was received by the Central Government on 04-03-2016.

[No. L-29012/27/2009-IR (M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 02 सन् 2010 I.T.C. (C)

सं. एल-29012/27/2009-आईआर (एम)

तारीख 14-7-2010

श्री गोविन्दराम चौधरी बनाम मैनेजिंग डायरेक्टर आर. के. मार्बल

12-12-2015

प्रार्थी मय अधिवक्ता श्री एन. के. चितौड़ा उपस्थिति

विपक्षी अधिवक्ता श्री एम एस छिपा एवं तथा अधिकृत

हस्ताक्षरकर्ता श्री अचलसिंह राठौड़ा, प्रबंधक - कार्मिक उपस्थित

प्रार्थी पक्ष एवं विपक्षी ने समझाईश के उपरान्त राष्ट्रीय लोक अदालत में राजीनामा पेश किया। जो दोनों पक्षों को सुनाया व समझाया गया। दोनों पक्षों ने राजीनामा सही होना स्वीकार किया।

राजीनामा प्रमाणित किया गया।

राजीनामा शामिल पत्रावली रहे।

राजीनामे में वर्णित शर्तों के अधीन प्रार्थी को विपक्षी संस्थान बतौर क्षतिपूर्ति एक मुश्त रुपये 1,12,000/- अक्षरे एक लाख बारह हजार रुपये मात्र अदा करेगा, तथा उक्त क्षतिपूर्ति की राशि 30 दिन की अवधि में अदा करेगा, अन्यथा उक्त राशि पर अवार्ड की तारीख से 10 प्रतिशत वार्षिक दर से ब्याज देया होगा।

पंचाट प्रकाशनार्थ समुचित सरकार को भेजा जावे।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो।

अय्यूब खान, न्यायाधीश

नई दिल्ली, 9 मार्च, 2016

का.आ. 459.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 64/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 459.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present:

Sri Muralidhar Pradhan, Presiding Officer

Dated the 19th day of January, 2016

INDUSTRIAL DISPUTE L.C.No. 64/2009

Between :

Sri Mothe Balaiah,
S/o Rajamallu,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Mothe Balaiah and numbered in this Court as L.C. No. 64/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 31.3.2001. He prayed this Court to set aside the termination order dated 31.3.2001 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs.40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 19th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 460.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 65/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 460.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 65/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present:

Sri Muralidhar Pradhan, Presiding Officer

Dated the 19th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 65/2009

Between :

Sri Kompally Narasimha Swamy,
S/o Mallesh,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Kompally Narasimha Swamy and numbered in this Court as L.C. No. 65/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed

this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000 in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 19th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 461.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबंध में उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 68/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 461.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present:

Sri Muralidhar Pradhan, Presiding Officer

Dated the 19th day of January, 2016

INDUSTRIAL DISPUTE L.C.No. 68/2009

Between :

Sri Katabathini Veeraiah,
S/o Eraiah,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Katabathini Veeraiah and numbered in this Court as L.C. No. 68/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 31.7.1997. He prayed this Court to set aside the termination order dated 31.7.1997 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000 in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 19th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 462.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 70/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 462.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 19th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 70/2009**Between :**Sri Mukkala Sammaiah,
S/o Mallaiah,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, AdvocatesFor the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates**AWARD**

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Mukkala Sammaiah and numbered in this Court as L.C. No. 70/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000 in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 19th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidenceWitnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 463.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 77/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 463.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 19th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 77/2009**Between :**Sri Sura Agaiah,
S/o Veeraiah,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, AdvocatesFor the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates**AWARD**

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Sura Agaiah and numbered in this Court as L.C. No. 77/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000 in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 19th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 464.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 78/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 464.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 78/2009**Between :**

Sri Katabathini Sambaiah,

S/o Buchiram,

R/o Peddapuram Village,

Atmakur Mandal,

Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Katabathini Sambaiah and numbered in this Court as L.C. No. 78/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 79/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 79/2009**Between :**

Sri Gaddam Ilaiah,

S/o Ilaiah,

R/o Peddapuram Village,

Atmakur Mandal,

Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Gaddam Ilaiah and numbered in this Court as L.C. No. 79/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 31.8.1997. He prayed this Court to set aside the termination order dated 31.8.1997 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000 in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 82/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 82/2009**Between :**Sri Kankanala Kommalu,
S/o Mankaiah,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, AdvocatesFor the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates**AWARD**

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Kankanala Kommalu and numbered in this Court as L.C. No. 82/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 31.7.1997. He prayed this Court to set aside the termination order dated 31.7.1997 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidenceWitnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 467.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 83/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 83/2009**Between :**

Sri Gorantla Sambaiah,

S/o Ramulu,

R/o Peddapuram Village,

Atmakur Mandal,

Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Gorantla Sambaiah and numbered in this Court as L.C. No. 83/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 468.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 84/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 84/2009**Between :**Sri Katabathini Pedda Sadaiah,
S/o Buchiram,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, AdvocatesFor the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates**AWARD**

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Katabathini Pedda Sadaiah and numbered in this Court as L.C. No. 84/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 469.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 91/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 21st day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 91/2009**Between :**Sri Yadandla Komuraiah,
S/o Ilaiah,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District

...Petitioner

AND1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, AdvocatesFor the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates**AWARD**

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Yadandla Komuraiah and numbered in this Court as L.C. No. 91/2009 and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 7.6.2000. He prayed this Court to set aside the termination order dated 7.6.2000 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 21st day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 470.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 92/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 21st day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 92/2009**Between :**

Sri Katabathini Veera Swamy,

S/o Buchiram,

R/o Peddapuram Village,

Atmakur Mandal,

Warangal District

...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.

2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and their workman Sri Katabathini Veera Swamy and numbered in this Court as (L.C. No. 92/2009) and notices were issued to the parties concerned.

2. The workman raised dispute against his illegal termination by the Respondent No.2 on 31.7.1997. He prayed this Court to set aside the termination order dated 31.7.1997 and direct the Respondents to reinstate the Petitioner with continuity of service together with benefits and full back wages.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits for his rendered service towards full and final

settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 21st day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 471.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 116/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 471.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 21st day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 116/2009**Between :**

Sri Bakka Narasaiah,
S/o Ilaiah, (Since died per L.R.),
Bakka Suguna W/o Late Narasaiah,
R/o Peddapuram Village,
Atmakur Mandal,
Warangal District ...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.
2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District ...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates

For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and L.R's of their deceased workman Bakka Narasaiah and numbered in this Court as L.C. No. 116/2009 and notices were issued to the parties concerned.

2. Smt. Bakka Suguna, W/o Late Bakka Narasaiah raised dispute against the deceased workman's illegal termination by the Respondent No.2 on 31.7.1997. She prayed this Court to set aside the termination order dated 31.7.1997 and direct the Respondents to treat as Late Bakka Narsaiah died in harness and to pay full back wages, with benefits from the date of termination to date of expiry of the workman Late Bakka Narsaiah.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits of deceased workman for his rendered service towards full and final settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 21st day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 472.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स याक ग्रेनाइट इंडस्ट्रीज प्राइवेट लिमिटेड और दूसरे के प्रबंधन के संबंध में उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 121/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-27025/1/2016-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 472.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Yak Granite Industries Pvt. Ltd. and Other and their workman, which was received by the Central Government on 04-03-2016.

[No. L-27025/1/2016-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD****Present:**

Sri Muralidhar Pradhan, Presiding Officer

Dated the 21st day of January, 2016

INDUSTRIAL DISPUTE L.C. No. 121/2009**Between :**

Sri Thudum Saraiah,
S/o Yellaiah (Since died per L.R's),
1. Thudum Laxmi, W/o Late Saraiah
2. Thudum Ravi, S/o Late Saraiah
3. Thudum Swarna, D/o Late Saraiah,
R/o Peddapuram Village, Atmakur Mandal,
Warangal District ...Petitioner

AND

1. The Managing Director,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Bangalore Road,
Chembaram Pakkam,
Chennai – 602 103.
2. The Manager,
Enterprising and Enterprises,
M/s. Yak Granite Industries Pvt. Ltd.,
Peddapuram (V), Atmakur (M),
Warangal District ...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Rama Aurava &
G. Srinivas, Advocates
For the Respondent : M/s. S. Venkateshwar Rao &
M. Govind, Advocates

AWARD

The above noted case is taken under Sec.2 A (2) of the I.D. Act, 1947 between the management of M/s. Yak Granites Pvt. Ltd., and L.R's of their deceased workman Sri Thudum Saraiah and numbered in this Court as L.C. No. 121/2009 and notices were issued to the parties concerned.

2. Smt. Thudum Laxmi and 2 others raised dispute against raised dispute against the deceased workman's illegal termination by the Respondent No.2 on 31.7.1997. They prayed this Court to set aside the termination order dated 31.7.1997 and direct the Respondents to treat as Late Thudum Saraiah died in harness and to pay full back wages, with benefits from the date of termination to date of expiry of the workman Late Thudum Saraiah.

3. Respondent also filed counter.

4. The Petitioner filed a memo stating that the matter was settled and the Petitioner received terminal service benefits of deceased workman for his rendered service towards full and final settlement. It is further stated in the memo that Respondent has offered to settle the issue out of the court by offering Rs. 40,000/- in lieu of reinstatement and other service benefits towards full and final settlement and Petitioner agreed to the settlement, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 21st day of January, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 मार्च, 2016

का.आ. 473.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 46/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-30011/24/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 473.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2015) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 04-03-2016.

[No. L-30011/24/2015-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA****Reference No. 46 of 2015****Parties:**Employers in relation to the management of Retail East,
Bharat Petroleum Corporation Ltd.**AND**

Their workmen

Present:

Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Managements : None

On behalf of the Workmen : None

State : West Bengal Industry : Petroleum

Dated: 23rd February, 2016.

AWARD

By Order No. L-30011/24/2015-IR(M) dated 21.07.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Col. B.L. Das, Operator of B.P. Birohi, contractor of Bharat Petroleum Corporation Ltd. by changing the category of contractual workmen from ‘Skilled’ to ‘Semi-skilled’ and ‘Semi-skilled’ to ‘Unskilled’ which caused financial hardship by changing their service condition under Section 9A of I.D. Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?”

2. When the case is taken up today for hearing, none appears either on behalf of the managements or on behalf of the union. It appears from the record that none appeared on behalf of any of the parties even on the previous two dates. In fact, none appeared on behalf of the parties since the initiation of this reference.

3. From the above facts and circumstances it may reasonably be presumed that the union at whose instance the present reference has been initiated has got no interest in the matter. So, no fruitful purpose will be served in keeping the matter pending.

4. Considering the above, instant reference is disposed of by passing a “No Dispute Award”.

Dated, Kolkata,
The 23rd February, 2016

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 474.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ संख्या 19/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2016 को प्राप्त हुआ था।

[सं. एल-30011/73/2006-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 9th March, 2016

S.O. 474.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2007) of the Central Government Industrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 04-03-2016.

[No. L-30011/73/2006-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1 MUMBAI****Present :**

JUSTICE S. P. MEHROTRA, Presiding Officer

REFERENCE NO. CGIT-1/19 OF 2007**Parties:**Employers in relation to the management of
Hindustan Petroleum Corporation Limited**And**

Their workmen

Appearances :For the first party/ : Mr. Lancy D'Souza,
Management Management Representative.For the second party/ : None present
Union

State : Maharashtra

Mumbai, dated the 29th day of February, 2016

AWARD

1. By the Order dated 12.2.2007, the Central Government in exercise of its powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the

Industrial Disputes Act, 1947 has made the following Reference to this Tribunal:

“Whether the demand of the 36 workmen (list enclosed) is justified and proper to get regularised their services in the Hindustan Petroleum Corporation Ltd., who are working at the respective Petrol Pumps of HPCL, especially at Hindustan Petroleum Corporation Limited Petrol Pump at Chembur at par with HPCL direct employees? If so, then what are the relief these 36 workmen listed (list enclosed) are entitled to?”

The said Reference has been numbered as Reference No. 19 of 2007.

BACKGROUND FACTS

2. The Statement of Claim dated 11.1.2012, was filed on behalf of the Hindustan Petroleum Petrol Pump Kamgar Union (hereinafter also referred to as “the second party/ Union”). This Tribunal by the Award dated 25.2.2013 disposed of the present Reference, inter-alia, holding that the concerned Workmen were not entitled to any relief. It was noted by the Tribunal in the said Award dated 25.2.2013 that no Written Statement had been filed on behalf of Hindustan Petroleum Corporation Ltd (hereinafter also referred to as “the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) nor had any evidence been led on behalf of Hindustan Petroleum Corporation Ltd (i.e. “the first party/ Management” or “the HPCL” or “the Corporation” or “the First Party / Company”)

3. The second party/Union thereupon filed a Writ Petition being Writ Petition No.9772 of 2013, before the Bombay High Court. The said Writ Petition was disposed of by the Order dated 1.9.2014 which is reproduced below:

“(1) Mr. D’Souza, the learned Advocate appearing for the respondent, concedes that the impugned order cannot be said to be a speaking order and that it does not even mention the decisions cited by the petitioner during the course of hearing of Reference (IDA) No. 19 of 2007. Therefore, he consents for remand of the matter to the Central Government Industrial Tribunal (CGIT)-cum-Labour Court, Mumbai. He, however, requests that the respondent be granted liberty to file an application before the CGIT for leave to file written statement.

(2) In view of the concession given, the petition is disposed off in following terms:-

ORDER

(i) The Award dated 25th February, 2013 passed in Reference (IDA) No. 19 of 2007 passed by the Learned Presiding Officer, Central Government Industrial Tribunal (CGIT)-cum-Labour Court,

Mumbai in Reference (IDA) No. 19 of 2007 is set aside.

(ii) Reference (IDA) No. 19 of 2007 is set aside.

(iii) The respondent is at liberty to file an application before the CGIT, Mumbai for permission to file Written Statement. The application, if any, shall be filed within a period of 3 weeks from today. On such application being filed, the same shall be considered by the CGIT in accordance with law.

(iv) The reference shall be heard and disposed off by CGIT, Mumbai within a period of 8 months from today.”

4. Pursuant to the said order dated 1.9.2014, passed in the aforesaid Writ Petition, an application was filed on behalf of the first party/Management on 18.9.2014 before this Tribunal. By the order dated 18.9.2014, the said application was directed to be put up on 19.9.2014 alongwith the record. It was, inter-alia, prayed in the said application that the first party/Management be granted permission to file its Written Statement in the matter as mentioned in the order dated 1.9.2014 passed in the aforesaid Writ Petition.

5. Pursuant to the order dated 18.9.2014, the said application filed on behalf of the first party/Management was placed before this Tribunal on 19.9.2014 alongwith the record. Shri S.D.Paithane, learned counsel for the second party/Union prayed for time to file Reply to the said application filed on behalf of the first party/Management seeking permission to file Written Statement. Accordingly, by the order dated 19.9.2014, the case was fixed for 14.11.2014 so as to enable Shri S.D.Paithane, learned counsel for the second party/Union to file his reply to the aforesaid application filed on behalf of the first party/Management seeking permission to file Written Statement.

6. In the meantime, on 9.10.2014, an application was filed by Shri S.D.Paithane, learned counsel for the second party/Union, inter-alia, praying that the matter being urgent, be taken on Board.

By the order dated 9.10.2014, the matter was directed to be put up on 10.10.2014 alongwith the record.

7. The matter was accordingly put up on 10.10.2014 alongwith the record.

8. On 10.10.2014, an Application for Interim Relief was filed on behalf of the second party/Union. By the order dated 10.10.2014, time was granted to the first party/Management for filing its Reply by 3.11.2014 to the aforementioned Application for Interim Relief filed on behalf of the second party/Union. Rejoinder if any, was to be filed on behalf of the second party/Union by the next date fixed in the matter. The case was directed to be put up on 14.11.2014 which was the date already fixed in the matter.

9. Pursuant to the order dated 10.10.2014, Reply on behalf of the first party/Management in respect of the aforementioned Interim Relief Application filed on behalf of the second party/Union, was filed on 5.11.2014. Documents mentioned in the said Reply were also filed on 14.11.2014 on behalf of the first party/Management alongwith the List dated 14.11.2014.

10. Further, on 3.11.2014, an affidavit in support of the aforementioned Interim Relief Application was filed by the learned counsel for the second party/Union.

11. On 14.11.2014, Reply on behalf of the second party/Union in respect of the application filed on behalf of the first party/Management seeking permission to file Written Statement was filed. By the order dated 14.11.2014, the case was directed to be put up on 19.11.2014.

12. On 19.11.2014, order was passed on the aforesaid application filed on behalf of the first party/Management seeking permission to file Written Statement. The said application was allowed subject to payment of Rs.10,000/- as cost to the second party/Union by the first party/Management.

13. By the order dated 19.11.2014, the case was directed to be put up on 28.11.2014. By the order dated 28.11.2014, time for payment of cost of Rs.10,000/- and filing of Written Statement on behalf of the first party/Management as mentioned in the Order dated 19.11.2014, was extended for the reasons mentioned in the order dated 28.11.2014. The case was directed to be put up on 3.12.2014.

14. Pursuant to the order dated 28.11.2014, cost of Rs.10,000/- was paid to Shri S.D.Paithane, learned counsel for the second party/Union on 2.12.2014. Written Statement on behalf of the first party/Management was also filed in the Office of the Tribunal on 2.12.2014.

15. On 3.12.2014, the Tribunal directed the Written Statement filed on behalf of the first party/Management to be taken on record. On the same day, Shri S.D.Paithane, learned counsel for the second party/Union filed Rejoinder in respect of the Reply filed on behalf of the first party/Management in the Interim Relief matter. On the same day, Shri S.D.Paithane, learned counsel for the second party/Union stated that he did not propose to file any Rejoinder in respect of the Written Statement filed on behalf of the first party/Management. Thereafter, arguments of the learned counsel for the parties on the Interim Relief Application commenced on the same day i.e. 3.12.2014. The Interim Relief matter was thereafter heard on various dates fixed in the case.

16. Arguments of the learned counsel for the parties in respect of the Interim Relief Application were concluded on 19.1.2015. Thereupon, by the Order dated 19.1.2015, the Tribunal reserved its Order in respect of the Interim Relief Application.

17. On 30.4.2015, the Tribunal pronounced its Order in respect of the Interim Relief Application filed on behalf of the second party/Union.

18. It may be noted that as the time fixed by the Honourable Bombay High Court in its order dated 1.9.2014 passed in Writ Petition No. 9772 of 2013, as mentioned above, was going to expire on 30.4.2015, this Tribunal sent a Communication dated 30.4.2015 to the Registrar General, High Court of Bombay, Mumbai, inter-alia, stating that the said Communication be placed “before the Honourable High Court with the request that the period for disposing of the aforesaid Reference may kindly be extended by a further period of 10 months.”

In response to the said Communication dated 30.4.2015, a Communication dated 21.7.2015 was received by this Tribunal, from the Bombay High Court. Relevant portion of the said Communication dated 21.7.2015 is reproduced below:

“With reference to your letter dated 30/4/2015 in outward No.CGIT-1/19/07/189/15, for grant of further extension of ten months for the disposal of Reference No. CGIT-19 of 2007. I am directed to state that your letter under reference along with the Writ Petition was placed before the Court (CORAM: SMT. R.P.SONDURBALDOTA.,J.) on 24/6/2015 for order, and that the Court pleased to pass the following order:

“Time extended as per the request”

Kindly take a note of the Court’s order and act accordingly.”

Thus, the request made by this Tribunal for extending the period for disposing of the Reference by a further period of 10 months was accepted by the Honourable Bombay High Court. The said period of 10 months is expiring on 29.2.2016.

19. Reverting to the facts of the present case, by the Order dated 30.4.2015, the matter was fixed on 5.6.2015 for framing of Issues and filing of documents on behalf of the parties. Thereafter, the case was adjourned on various dates for the reasons mentioned in the Orders passed on such dates.

20. On 18.11.2015, an Application dated 18.11.2015 was filed on behalf of the first party/Management, inter-alia, praying for proceeding ex parte. None was present on behalf of the second party/Union on the said date i.e. 18.11.2015. In the circumstances, by the Order dated 18.11.2015, the case was adjourned to 10.12.2015.

21. On 10.12.2015, another Application dated 10.12.2015 was filed on behalf of the first party/Management.

22. On 10.12.2015, the Tribunal passed Order in respect of the aforesaid two Applications filed on behalf of the first party/Management, namely, Application dated 18.11.2015 and Application dated 10.12.2015. The Tribunal by the Order dated 10.12.2015, inter-alia, directed that the Reference would proceed ex-parte as against the second party/Union. The said Order dated 10.12.2015, is reproduced below:

“(1) ORDER ON APPLICATION DATED 18.11.2015 FOR PROCEEDING EX-PARTE FILED ON BEHALF OF THE FIRST PARTY/MANAGEMENT.

(2) APPLICATION DATED 10.12.2015 FILED ON BEHALF OF THE FIRST PARTY/MANAGEMENT.

It appears that this Tribunal by the Award dated 25.2.2013, disposed of Reference No. CGIT-1/19 of 2007. The second party/Union filed a Writ Petition being Writ Petition No. 9772 of 2013 before the Bombay High Court. The Honourable Bombay High Court by its Order dated 1.9.2014 disposed of the said Writ Petition in terms as mentioned in paragraph 2 of the said Order.

Pursuant to the said Order dated 1.9.2014, passed by the Honourable Bombay High Court, the matter came up before this Tribunal. An Application for Interim Relief was filed on behalf of the second party/Union on 10.10.2014. An affidavit in support of the said Interim Relief Application was filed on behalf of the second party/Union on 14.11.2014, as noted in the order passed in the said date.

Reply in respect of the Interim Relief Application was filed on behalf of the first party/Management. Rejoinder on behalf of the second party/Union in respect of the aforesaid Reply filed on behalf of the first party/Management, was also filed on behalf of the second party/Union.

The arguments in respect of the Interim Relief Application were heard on various dates as mentioned in the Order Sheet of the present case.

On 19.1.2015, arguments of the learned counsel for the parties on Interim Relief Application concluded. Thereupon, by the Order dated 19.1.2015, the Tribunal reserved its Order in respect of the Interim Relief Application. The Order dated 19.1.2015 is reproduced below:

Pursuant to the order dated 15.1.2014, the case is put up today.

Mr.Lancy D’Souza, learned counsel for the first party/Management and Mr.S.D.Paithane, learned counsel for the second party/Union are present.

Arguments of the learned counsel for the parties on Interim Relief Application concluded today.

Order reserved.

On 30.4.2015, the Tribunal pronounced its Order on the aforesaid Interim Relief Application filed on behalf of the second party/Union. The Order dated 30.4.2015 is quoted below:

Pursuant to the order dated 19.1.2015, the case has been put up today for orders on Interim Relief Application filed on 10.10.2014.

Intimation regarding the fixation of today’s date for orders on the aforementioned Application was given to Mr.Lancy D’Souza, learned counsel for the first party/Management and Mr.S.D.Paithane, learned counsel for the second party/Union on telephone by the Secretary to this Tribunal.

Mr. Lancy D’Souza, learned counsel for the first party/Management is present.

Mr. S.D. Paithane, learned counsel for the second party/Union has informed the Secretary to this Tribunal that as he is at present in Pune, one of the Workmen will be present before the Tribunal on behalf of the second party/Union today.

Accordingly, Shri Sugriv Kamble, one of the Workmen is present on behalf of the second party/Union. Order on Interim Relief Application filed on 10.10.2014, has been pronounced today in Open Court.

Interim Relief Application has been rejected.

Order is on separate sheets.

Fix on 5.6.2015 for framing of issues and filing of documents on behalf of the parties”.

From the perusal of the above Order dated 30.4.2015, it is evident that Mr.Sugriv Kamble, one of the Workmen was present on behalf of the second party/Union on the said date. In the above Order dated 30.4.2015, it is also recorded that intimation regarding the fixation of the said date for orders on the aforesaid Interim Relief Application was given to Mr.Lancy D’Souza, learned counsel for the first party/Management and Mr.S.D.Paithane, learned counsel for the second party/Union on telephone by the Secretary to this Tribunal

The above Order further records that “Mr. S.D. Paithane, learned counsel for the second party/Union has informed the Secretary to this Tribunal that as he is at present in Pune, one of the Workmen will be present before the Tribunal on behalf of the second party/Union today”.

It is thus evident that the second party/Union as well as its counsel Mr. S.D. Paithane were fully aware of the said date i.e. 30.4.2015 fixed for pronouncing the Order on the aforesaid Interim Relief Application filed on behalf of the second party/Union.

By the said Order dated 30.4.2015, the matter was fixed on 5.6.2015 for framing of Issues and filing of documents on behalf of the parties.

It may be noted that as the time fixed by the Honourable Bombay High Court in its order dated 1.9.2014 passed in Writ Petition No. 9772 of 2013, as mentioned above, was going to expire on 30.4.2015, this Tribunal sent

a Communication dated 30.4.2015 to the Registrar General, High Court of Bombay, Mumbai, inter-alia stating that the said Communication be placed “before the Honourable High Court with the request that the period for disposing of the aforesaid Reference may kindly be extended by a further period of 10 months.”

In response to the said Communication dated 30.4.2015, a Communication dated 21.7.2015 was received by this Tribunal, from the Bombay High Court. Relevant portion of the said Communication dated 21.7.2015 is reproduced below:

“With reference to your letter dated 30/4/2015 in outward No.CGIT-1/19/07/189/15, for grant of further extension of ten months for the disposal of Reference No. CGIT-19 of 2007. I am directed to state that your letter under reference along with the Writ Petition was placed before the Court (CORAM: SMT. R. P.SONDURBALDOTA, J.) on 24/6/2015 for order, and that the Court pleased to pass the following order:

“Time extended as per the request”

Kindly take a note of the Court’s order and act accordingly.”

Thus, the request made by this Tribunal for extending the period for disposing of the Reference by a further period of 10 months was accepted by the Honourable Bombay High Court. The said period of 10 months would be expiring on 29.2.2016.

Reverting to the facts of the present case, pursuant to the Order dated 30.4.2015, the case was put up before the Tribunal on 5.6.2015. On the said date, i.e. 5.6.2015, as noted in the order passed on the said date, Mr.Lancy D’Souza, learned counsel for the first party/Management was present. However, none was present for the second party/Union.

In the circumstances, by the Order dated 5.6.2015, the case was adjourned to 15.7.2015 for framing of issues and filing of documents on behalf of the parties.

Pursuant to the Order dated 5.6.2015, the case was put up on 15.7.2015.

On 15.7.2015, as noted in the Order passed on the said date, Ms.Deepika Agrawal, holding brief for Mr.Lancy D’Souza, learned counsel for the first party/Management was present.

Mr. Ambadar Kamble, one of the Workmen was present on behalf of the second party/Union.

By the Order dated 15.7.2015, the case was adjourned to 27.8.2015 for framing of issues and filing of documents on behalf of the parties.

Pursuant to the Order dated 15.7.2015, the case was put up on 27.8.2015.

On 27.8.2015, as noted in the Order passed on the said date, Ms.Deepika Agrawal, holding brief for Mr.Lancy D’Souza, learned counsel for the first party/Management was present. However, none was present for the second party/Union.

Ms.Deepika Agrawal, holding brief for Mr.Lancy D’Souza, learned counsel for the first party/Management submitted Draft Issues in the present case on the said date i.e. 27.8.2015. However, as none was present on behalf of the second party/Union, the Tribunal by its Order dated 27.8.2015 adjourned the case to 1.10.2015.

Pursuant to the Order dated 27.8.2015, the case was put up on 1.10.2015.

On 1.10.2015, as noted in the Order passed on the said date, Ms.Shehwar Qureshi, holding brief for Mr.Lancy D’Souza, learned counsel for the first party/Management was present. However, none was present for the second party/Union. In view of the absence of the second party/Union, the Tribunal by its Order dated 1.10.2015, adjourned the case to 18.11.2015.

On 18.11.2015, as noted in the Order passed on the said date, Ms.Shehwar Qureshi, learned counsel for the first party/Management was present. However, none was present on behalf of the second party/Union. Ms.Shehwar Qureshi, learned counsel for the first party/Management, filed an Application dated 18.11.2015 on the said date i.e. 18.11.2015, inter-alia, praying that Reference be proceeded ex parte.

In the circumstances, by the Order dated 18.11.2015, the case was adjourned to 10.12.2015.

Pursuant to the Order dated 18.11.2015, the case is put up today.

Today, Mr. Lancy D’Souza, learned counsel for the first party/Management is present. However, none is present for the second party/Union.

An Application dated 10.12.2015 has been filed today on behalf of the first party/Management. Alongwith the said Application, a copy of the Communication dated 19.11.2015 alongwith enclosures thereto sent by Mr. Lancy D’Souza, learned counsel for the first party/Management to Shri S.D. Paithane, learned counsel for the second party/Union has been enclosed.

A perusal of the said Communication dated 19.11.2015 shows that alongwith the said Communication, copy of the Draft Issues submitted on behalf of the first party/Management on 27.8.2015 as well as copy of the Application dated 18.11.2015 filed on behalf of the first party/Management, inter-alia praying that the Reference be proceed ex parte, were enclosed.

A perusal of the said Communication dated 19.11.2015 further shows that the said Communication, inter-alia informed Mr. S.D. Paithane, learned counsel for the

second party/Union that the Reference would now be listed on 10.12.2015 i.e. today.

A perusal of the said Communication dated 19.11.2015 further shows that on the said Communication, Shri S.D.Paithane, learned counsel for the second party/Union made the following endorsement: "We have not received any Court Notice. Whether extension has been granted and to whom?"

It is thus evident that despite having intimation regarding today's date, none is present today on behalf of the second party/Union.

As noted above, the extended time granted by the Honourable Bombay High Court is going to expire on 29.2.2016.

Having regard to the facts and circumstances narrated above and keeping in view that the extended time fixed by the Honourable Bombay High Court is going to expire on 29.2.2015, there is no option but to proceed with the Reference ex-parte as against the second party/Union.

It is accordingly directed that the Reference will proceed ex-parte as against the second party/Union.

Let the matter be fixed on 06.01.2016 for framing of issues and filing of documents."

23. Pursuant to the Order dated 10.12.2015, the case was put up on 6.1.2016. On the said date, Mr.Lancy D'souza, learned counsel for Hindustan Petroleum Corporation Ltd (i.e. "the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") was present. However, none was present for the second party/Union. By the Order dated 6.1.2016, the Tribunal framed Issues in the case. As the matter was proceeding ex-parte against the second party/Union, and none was present even on 6.1.2016 on behalf of the second party/Union, the evidence on behalf of the second party/Union was closed by the Order dated 6.1.2016, and the matter was fixed on 28.1.2016 for evidence on behalf of Hindustan Petroleum Corporation Limited ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company").

24. The said Order dated 6.1.2016 is reproduced below:
"Pursuant to the order dated 10.12.2015, the case is put up today

By the order dated 10.12.2015, the Reference was directed to proceed to ex-parte as against the second party/Union (Hindustan Petroleum Petrol Pump Kamgar Union).

By the said order dated 10.12.2015, the case was directed to be fixed on 6.01.2016 i.e. today for framing of Issues and filling of documents.

The case is accordingly put up today.

Shri Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company) is present.

None is present for the second party /Union

I have perused the pleadings exchanged between the parties and heard the submissions made by Shri Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd.(i.e.first party/Management or first party/Company).

Having perused the pleadings exchanged between the parties and having considered the submissions made by Shri Lancy D.'Souza, learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party /Management or first party/Company), the Issues as mentioned in separate sheet are framed in the present case.

No other Issue arises in the present case nor has any other Issue been pressed by the learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company).

As the matter is proceeding ex-parte against the second party/ Union, and none is present even today on behalf of the second party/Union, the evidence on behalf of the second party/Union is closed.

Let the case be fixed on 28.01.2016 for evidence on behalf of Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company)."

25. Pursuant to the said Order dated 6.1.2016, the case was put up on 28.1.2016.

26. On 28.1.2016, Mr.Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") was present. However, none was present on behalf of the second party/Union. Mr.Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd (i.e. "the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") filed Affidavit of Evidence sworn by Girish Vithalrao Raut (MW-1) on behalf of Hindustan Petroleum Corporation Ltd.("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company"). An Application was also filed alongwith the said Affidavit, inter-alia, stating that documents filed on behalf of Hindustan Petroleum Corporation Ltd. (i.e."the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") by lists dated 14.11.2014, 3.12.2014 and 13.1.2015 be considered as its documents on the merit of the matter; and that the said documents had been referred to in the said Affidavit of Evidence.

27. In view of the averments made in the said Application filed on behalf of the Hindustan Petroleum Corporation Ltd ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party /Company"), the Tribunal by the Order dated 28.1.2016, directed that the documents

filed with the lists dated 14.11.2014, 3.12.2014 and 13.1.2015 be treated as documents filed on behalf of Hindustan Petroleum Corporation Ltd. ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") on merits of the matter.

28. Further, having regard to the averments made in the aforesaid Affidavit of Evidence sworn by Girish Vithalrao Raut (MW-1), the documents filed with the aforesaid lists were marked exhibits as mentioned in the Order dated 28.1.2016.

29. It was inter-alia, further noted in the said Order dated 28.1.2016 that "as the matter is proceeding ex-parte against the second party/Union, and none is present even today on behalf of the second party/Union, cross-examination of the aforesaid Girish Vithalrao Raut (MW-1) whose Affidavit of Evidence has been filed today, is closed".

30. The Tribunal by the said Order dated 28.1.2016, fixed the case for arguments on 19.2.2016.

31. Pursuant to the Order dated 28.1.2016, the case was put up on 19.2.2016.

Mr. Lancy D'Souza, learned counsel for the first party/Management was present on the said date. None was present on behalf of the second party/Union.

32. Arguments of Mr.Lancy D'Souza, learned counsel for the first party/Management were heard on the same day, i.e., 19.2.2016. After conclusion of arguments of Mr.Lancy D'Souza, learned counsel for the first party/Management, the Tribunal by the Order dated 19.2.2016 reserved its Award.

PLEADINGS: Let us now consider the relevant averments made in the pleadings exchanged between the parties.

33. It is, inter-alia, stated in the Statement of Claim filed on behalf of the second party/Union that the demand of 36 workmen had initially been filed. However, many workmen retired and hence now $19+2=21$ workmen are pursuing the matter. It is, inter-alia, further stated in the Statement of Claim that the demand as contained in the Reference is justified and proper to get regularized services of the workmen in Hindustan Petroleum Corporation Limited, who are working at Hindustan Petroleum Corporation Limited Petrol Pump at Chembur at par with Hindustan Petroleum Corporation Limited direct employees.

34. In para 5 of the Statement of Claim, it is, inter-alia, stated that "the workers are working in the said Petrol Pump since many years", and that "the workers are working continuously for more than 240 days in a year for many years however, they are denied permanency by the Government owned Corporation is a serious matter as it shows that the Central Government is not following Labour Laws", and that "the HPCL Company appointed agents on their behalf to run the business for them", and that "the

name of the Petrol Pump is Hindustan Petroleum, the logo on uniform is of Hindustan Petroleum", and that "this clearly shows that the Petrol Pump is owned and managed and controlled by Hindustan Petroleum Corporation Limited".

35. It is, inter-alia, prayed in the Statement of Claim that the Reference be allowed in respect of 21 workmen whose names are mentioned in Annexure 'A'.

36. In the Written Statement filed on behalf of the first party/Management in reply to the aforesaid Statement of Claim, it is, inter-alia, stated that the present Reference has been made at the instance of one Rajya Rashtriya Kamgar Sangh (INTUC), and the Hindustan Petroleum Petrol Pump Kamgar Union has no locus standi even to prosecute the Reference much less to file a Statement of Claim as the said Kamgar Union is not a party to the Reference. It is, inter-alia, further stated in the Written Statement that the dispute referred for adjudication does not partake the care of an Industrial Dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 inasmuch none of the persons concerned in the present Reference is a workman of the first party/Company as defined in Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in the Written Statement that the first party/Company is a Government of India Undertaking, falling under the Administration jurisdiction of the Ministry of Petroleum and Natural Gas, New Delhi; and that the first party/Company is engaged in the refining of imported and indigenous crude oil, storage and marketing of petrol, Diesel, HSD, LPG, ATF, Asphalt, Lube Oils, Furnace Oil, Hexane, and other Petroleum products; and that for the purpose of marketing of various petroleum products such as MS (Motor Spirit-Petrol), HSD (High Speed Diesel) etc., the Retail outlet Dealerships are awarded by the first party/Company to the Individual/Firm /Association/Company etc., by following Dealership Selection Guidelines framed under the Government of India Directives, and such Retail Outlets are managed and controlled by the concerned Individual/Firm/Association/Company etc., as the case may be, wherein they themselves appoint/engage their employees to operate the Retail Outlet and the first party/Company has no control of whatsoever nature with their affairs as they are separate/Independent establishments solely responsible to operate the Retail Outlets; and that the first party/Company has awarded more than 13,000 such Retail Outlets across the country.

37. It is, inter-alia, further stated in the Written Statement that the first party/Company had entered into a Dealership Agreement for retail outlet at Chembur with Mr.Munir Mitha, Mr.Fateh Mitha and Mrs.Razia A. Mitha whereby dealership was granted on partnership basis, for supply of MS, HSD, and Lubricants of the first party/Company; and that the partnership was conducted in the name and style of M/s. Chhagan Mitha and Co. It is, inter-alia, further stated in the Written Statement that in furtherance of the

obligations under the contract of dealership dated Jan. 1, 1977, M/s. Chhagan Mitha and Co. selected and appointed their own employees for administering and managing the petrol pump; and that the service conditions of the personnel appointed by the dealers, such as their Wages, Leave, Bonus, Work timings etc. were determined by the said dealer and the first party/Company did not have any say of any nature whatsoever in this regards; and that the work of these personnel, appointed by the dealer, was supervised and controlled by the dealer themselves or through Supervisors appointed by the dealer.

38. It is, inter-alia, further stated in the Written Statement that on account of various malpractices and other acts/omissions on the part of M/s. Chhagan Mitha and Co., the first party/Company was left with no other alternative but to terminate the agreement with M/s. Chhagan Mitha and Co. and accordingly, by Termination Letter dated 4.5.2005, Dealership of M/s. Chhagan Mitha & Co. was terminated.

39. It is, inter-alia, further stated in the Written Statement that upon termination of the Dealership Agreement with M/s. Chhagan Mitha & Co., the first party/Company appointed M/s. Mumbai Taxi Association Co-operative Consumer Society Ltd. as an ad-hoc dealer w.e.f. May 4, 2005; and that the ad-hoc dealership awarded to M/s. Mumbai Taxi Association Co-operative Consumer Society Ltd was renewed from time to time till 16.5.2010. It is, inter-alia, stated in the Written Statement that the persons who were working with M/s. Chhagan Mitha and Co. approached the ad-hoc dealer M/s. Mumbai Taxi Association Co-operative Consumer Society Ltd. for work/employment; and that since the terms and conditions offered by M/s. Mumbai Taxi Association Co-operative Consumer Society Ltd. were acceptable to the said persons, they took up employment with M/s. Mumbai Taxi Association Co-operative Consumer Society Ltd.

40. It is, inter-alia, further stated in the Written Statement that upon completion of tenure of M/s. Mumbai Taxi Association Co-operative Consumer Society Ltd. as ad-hoc dealer, M/s. Kapadia Brothers was appointed as ad-hoc dealer by letter dated 10.5.2010 who had taken over the said outlet effective 17.5.2010; and that ad-hoc dealership of M/s. Kapadia Brothers was continued up to 29.4.2012; and that thereafter, M/s. Suburban Service Station was appointed as ad-hoc dealer by letter dated 30.4.2012; and that ad-hoc dealership of Suburban Service Station was continued upto 30.9.2014.

41. It is, inter-alia further stated in the Written Statement that upon completion of tenure of M/s. Suburban Service Station, effective 30.9.2014, M/s. Renuka Enterprises has been awarded contract to operate the said outlet as Service Provider; and that M/s. Renuka Enterprises has been appointed after following procedure which is normally followed by Central Public Sector Enterprises as per Government of India Guidelines; and that in order to appoint

service provider at the said outlet, public bids were invited through News paper Notification; and that M/s. Renuka Enterprises has started operations at the said outlet by deploying its own manpower.

42. It is, inter-alia, further stated in the Written Statement that the persons whose names are set out in the Annexure to the Order of Reference are not the employees of first party/Company and were never employed by the first party/Company in any capacity whatsoever; and that there is/was no employer-employee relationship between the first party/Company and the persons whose names are set out in the Annexure to the Order of Reference. It is, inter-alia, further stated in the Written Statement that the Workmen concerned in the present Reference were engaged by M/s. Mumbai Taxi Association without any pressure, directives or directions or requisition of any nature whatsoever of or from the first party/Company; and that subsequently, some of the workmen among the said workmen were engaged by M/s. Kapadia Bros who was subsequent ad-hoc dealer; and that thereafter M/s. Suburban Service Station employed about 21 workers among 37 workmen under Reference. It is, inter-alia, further stated in the Written Statement that the first party/Company is not aware of and is also not concerned in any manner whatsoever with the terms of employment and/or engagement of the persons concerned in the present Reference with various ad-hoc dealers; and that the first party/Company is not the employer of the persons whose names are listed in the Schedule to the Reference; and that there was/is no supervision or control of whatsoever nature over these persons by the first party/Company; and that the first party/Company has not, at any point of time whatsoever, paid the salary or allowances or other benefits to the persons concerned in the present Reference.

43. It is, inter-alia, further stated in the Written Statement that the first party/Company awards dealerships to parties after following the due procedure and diligences prescribed by the Ministry of Petroleum and Natural Gas, Govt. of India, New Delhi; and that the first party/Company is not concerned with and is therefore, not aware of and does not admit any arrangements or agreements between the dealers inter se or between the dealers and these persons. It is inter-alia, further stated in the Written Statement that there is no privity of contract between the first party/Company and the workmen represented by the Union. It is, inter-alia, further stated in the Written Statement that the persons engaged in the said Petrol Pump are not doing identical jobs which are being carried out by the regular employees of the first party/Company.

44. It is inter-alia, further stated in the Written Statement that the first party/Company has absolutely no voice in the selection, appointment, supervision and working of the workmen engaged by the concerned Dealers/ad-hoc dealers; and that being Government of India Undertaking,

the service of first party/Company is the public employment and recruitment in the service is done through public notification by following due recruitment procedure which is followed by Government of India/Public Sector Undertakings; and that the first party/Company engages its workmen as per its recruitment policy and as per statutory compliance such as Employment Exchange Act, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, and Public Notifications offering equal opportunity to the People of India who are fulfilling the Qualification, Age, Reservation, and Experience etc; and that all vacancies are compulsorily notified to the Employment Exchange and Open Public advertisement for compliance of Reservation Policy for various categories like SC/ST/OBC etc.

45. It is, inter-alia, further stated in the Written Statement that in the instant case, the workmen under Reference have been engaged by the Dealer/Ad-hoc Dealer and, their claim for employment and regularization is merely an attempt for back-door entry, which is clearly in utter disregard of the various pronouncement of the Apex Court and against the Public Policy; and that the first party/Company being a Public Sector Undertaking is bound to recruit persons who are eligible under the Rules, Regulations and the Directions of the Central Government in this regard. It is, inter-alia, further stated in the Written Statement that there cannot be any demand for regularization of services by persons who have not even entered in the employment of the first party/Company; and that their employment with the dealers cannot be construed as employment with the first party/Company; and that although the said persons were working at the first party/Company's petrol pump at Chembur, they were so working as employees of the respective Dealers which fact has been admitted by the concerned persons as well as the Union in several judicial and statutory proceedings.

46. Denying the allegations made in paragraph 5 of the Statement of Claim, it is stated in paragraph 46 of the Written Statement that the first party Company appointed dealers to manage and control the petrol pump, and that "it is denied that the first party/Company appointed any Agents on their behalf to run their business"; and that the name of Hindustan Petroleum Corporation Limited and its logo, if any, on the uniforms does not create any employer-employee relationship between itself and the employees of the dealers; and that although the petrol pump is owned by the first party/ Company, the same was managed and controlled by the respective dealers appointed by the Company from time to time.

47. As regards Rejoinder in respect of the Written Statement filed on behalf of the first party/Management, it has already been noted, that on 3.12.2014, Mr.S.D.Paithane, learned counsel for the second party/Union stated that he did not propose to file any Rejoinder in respect of the

Written Statement filed on behalf of the first party/Management.

48. ISSUES :

By the Order dated 6.1.2016, following Issues have been framed in the present case:

1. Whether Hindustan Petroleum Petrol Pump Kamgar Union (hereinafter also referred to as "the second party/Union") has locus standi to prosecute the present Reference and file Statement of Claim on behalf of the persons mentioned in the Order of Reference (hereinafter also referred to as the "concerned persons")?
2. Whether any relationship of Employer and Workmen between Hindustan Petroleum Corporation Ltd. (hereinafter also referred to as "the first party/Management" or "the first party/ Company") and the concerned persons has been proved by the second party/Union? If not, its effect?
3. Whether the demand of the concerned persons for regularization of their services in the services of Hindustan Petroleum Corporation Limited (i.e. the first party/Company" or "the first party/ Management") at par with the direct employees of Hindustan Petroleum Corporation Ltd. (i.e. "the first party/Company" or "the first party/ Management") is justified and proper?
4. To what relief, if any, the second party/ Union is entitled?

49. EVIDENCE:

As noted earlier, by the Order dated 6.1.2016, the Tribunal, inter-alia, directed that "as the matter is proceeding ex-parte against the second party/Union, and none is present even today on behalf of the second party/Union, the evidence on behalf of the second party/Union is closed." Thus, no evidence has been led on behalf of the second party/Union in support of its case.

50. Further, as noted earlier, on an Application filed on behalf of Hindustan Petroleum Corporation Ltd. ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") on 28.1.2016, the Tribunal by the Order dated 28.1.2016, directed that the documents filed with the lists dated 14.11.2014, 3.12.2014 and 13.1.2015 on behalf of Hindustan Petroleum Corporation Ltd. ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company") be treated as documents filed on its behalf on merits of the matter.

51. Again as noted earlier, on 28.1.2016, an Affidavit of Evidence sworn by Girish Vithalrao Raut (MW-1) was filed on behalf of Hindustan Petroleum Corporation Ltd. ("the first party/Management" or "the HPCL" or "the Corporation" or "the First Party / Company").

52. Further, having regard to the averments made in the aforesaid Affidavit of Evidence sworn by Girish Vithalrao Raut (MW-1), the documents filed with the aforesaid lists were marked exhibits as mentioned in the Order dated 28.1.2016.

53. Again, the Tribunal in the Order dated 28.1.2016, inter-alia, noted that “as the matter is proceeding ex parte against the second party/Union, and none is present even today on behalf of the second party/Union, cross-examination of the aforesaid Girish Vithalrao Raut (MW-1) whose Affidavit of Evidence has been filed today, is closed”. Therefore, the statement of the aforesaid Girish Vithalrao Raut (MW-1) as contained in the said Affidavit of Evidence, has gone unchallenged.

54. ARGUMENTS:

As noted earlier, by the Order dated 28.1.2016, the Tribunal fixed the case for arguments on 19.2.2016.

Pursuant to the Order dated 28.1.2016, the case was put up on 19.2.2016.

Mr. Lancy D’Souza, learned counsel for the first party/Management was present on the said date. None was present on behalf of the second party/Union.

Mr. Lancy D’Souza, learned counsel for the first party/Management made his submissions and concluded the same.

Submissions made by Mr. Lancy D’Souza, learned counsel for the first party/Management will be considered at the appropriate places in the present Award while recording findings on various Issues.

55. FINDINGS:

ISSUE NO.1: Issue No.1 as noted above is “Whether Hindustan Petroleum Petrol Pump Kamgar Union (hereinafter also referred to as “the second party/Union”) has locus standi to prosecute the present Reference and file Statement of Claim on behalf of the persons mentioned in the Order of Reference (hereinafter also referred to as the “concerned persons”)?”

56. A perusal of the Reference Order dated 12.2.2007 shows that the Reference was made at the instance of “The Secretary, Rajya Rashtriya Kamgar Sangh (INTUC)”. On the first page of the Statement of Claim dated 11.1.2012, in the array of parties, the second party has been described as “The Secretary, Rajya Rashtriya Kamgar Sangh (INTUC).” However, in the Verification Clause on the last page of the Statement of Claim, the verification has been done by Jalinder Salve, describing himself to be “Secretary, Hindustan Petroleum Petrol Pump Kamgar Union”.

57. It is submitted by Mr. Lancy D’Souza, learned counsel for the first party/Management that the second party/Union has no locus standi to file the Statement of Claim in the present matter. It is submitted that by the List

dated 3.12.2014, Report dated 17.10.2006 (Ex.M-1) was filed on behalf of the first party/Management. The said Report was a Report sent by the Assistant Labour Commissioner (Central), Mumbai, to the Secretary, Government of India, Ministry of Labour, New Delhi regarding failure of conciliation in respect of the “Industrial Dispute between the Management of Hindustan Petroleum Corporation Ltd and Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC)”. It is submitted that the said Report, inter-alia, categorically stated that “the Secretary, Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC) has raised an industrial dispute vide its letter dated 10.2.2006 over the demand for permanency of workmen who are working the petrol Pumps.....”. Thus, the Industrial Dispute was raised by the Secretary, Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC). In the Order of Reference dated 12.2.2007, party described at Item No.2 is The General Manager (Retail), Hindustan Petroleum Corporation Ltd., while the party described at item No.3 is the Secretary, Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC). Thus, the parties to the Industrial Dispute were Hindustan Petroleum Corporation Ltd. and the Secretary, Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC). The Order of Reference nowhere refers to Hindustan Petroleum Petrol Pump Kamgar Union i.e. the second party/Union. Thus, the second party/Union i.e. Hindustan Petroleum Petrol Pump Kamgar Union was not a party to the Reference. On page 2 of the Order of Reference dated 12.2.2007, the submission proceeds, it is mentioned that “the parties raising the dispute shall file a Statement of Claim.....” Thus, the parties to the Reference were required to file a Statement of Claim. It is submitted that Rule 10-B of the Industrial Disputes (Central) Rules, 1957 makes similar requirement in sub-rule (1) wherein, it is, inter-alia, stated that “.....the Central Government shall direct the party raising the dispute to file a Statement of Claim.....”

58. As noted earlier, in the Written Statement filed on behalf of the first party/Management, it is, inter-alia, stated that the present Reference has been made at the instance of one Rajya Rashtriya Kamgar Sangh (INTUC), and the Hindustan Petroleum Petrol Pump Kamgar Union (second party/Union) has no locus standi to prosecute the present Reference much less to file a Statement of Claim as the said Kamgar Union is not a party to the Reference.

59. It is submitted by Mr. Lancy D’Souza, that from the above, it is clear that the Statement of Claim was to be filed on behalf of the Secretary, Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC). In fact, on the first page of the Statement of Claim in the array of parties, the second party has been described as “The Secretary, Rajya Rashtriya Kamgar Sangh (INTUC)” However, in the Verification Clause on the last page of the Statement of Claim, the verification has been done by Jalinder Salve, describing himself to be “Secretary, Hindustan Petroleum Petrol Pump Kamgar Union.” Therefore, the submission proceeds, the

Statement of Claim cannot be read as part of the proceedings as it has been filed by a party who has no locus standi and who has not raised the Industrial Dispute.

60. Again, Shri Lancy D'Souza, learned counsel for the first party/Management submits that there is nothing on record to show that the name of Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC) has been changed to Hindustan Petroleum Petrol Pump Kamgar Union, nor has the second party/Union (Hindustan Petroleum Petrol Pump Kamgar Union) got itself impleaded as a party to the Reference.

61. It is further submitted by Mr.Lancy D'Souza, learned counsel for the first party/Management that there is no evidence or affidavit to show that the concerned workmen/concerned persons in the present Reference have given any authorization to the second party/Union to prosecute the Reference on their behalf or file Statement of Claim in the present Reference.

62. It is submitted that Vakaltnamea filed by Mr.S.D.Paithane has been issued in his favour to represent the second party/Union, which, as per the Reference as well as the Statement of Claim, is "Rajya Rashtriya Kamgar Sangh", and not "Hindustan Petroleum Petrol Pump Kamgar Union".

63. It is further submitted that to show locus standi, the second party/Union (i.e. Hindustan Petroleum Petrol Pump Kamgar Union) must show that the concerned workmen/concerned persons in the Reference are its members.

64. I have considered the submissions made by Mr.Lancy D'Souza, learned counsel for the first party/Management.

65. As noted earlier, the Report dated 17.10.2006 (Ex.M-1) sent by the Assistant Labour Commissioner (Central), Mumbai to the Secretary, Government of India, Ministry of Labour, New Delhi shows that the Industrial Dispute was raised by the Secretary, Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC). The Order of Reference also shows that the parties to the Industrial Dispute were Hindustan Petroleum Corporation Ltd. and the Secretary, Rajya Rashtriya Kamgar Sangh (INTUC). As noted earlier, on the first page of the Statement of Claim in the array of parties, the second party has been described as "The Secretary, Rajya Rashtriya Kamgar Sangh (INTUC)" while the verification in the Verification Clause on the last page of the Statement of Claim has been done by Jalinder Salve, describing himself to be "Secretary, Hindustan Petroleum Petrol Pump Kamgar Union".

66. The Tribunal by the Award dated 25.2.2013 disposed of the present Reference, inter-alia, holding that the concerned workmen/concerned persons in the present Reference were not entitled to any Relief.

67. Thereupon, a Writ Petition being Writ Petition No. 9772 of 2013 was filed before the Bombay High Court. The said Writ Petition was entertained by the Hon'ble

Bombay High Court, and disposed of by the Order dated 1.9.2014, as noted earlier.

68. As would be evident from a perusal of the Order dated 1.9.2014 passed in the said Writ Petition No. 9772 of 2013, the said Writ Petition was filed before the Bombay High Court describing "Rajya Rashtriya Kamgar Sangh (INTUC) now Hindustan Petrol Pump Kamgar Union" as the Petitioner. By the said Order dated 1.9.2004 passed in the said Writ Petition, the matter was remanded to this Tribunal. No objection was raised on behalf of the first party/Management in the Writ Petition before the Honourable Bombay High Court regarding locus standi of the second party/Union (Hindustan Petroleum Petrol Pump Kamgar Union) to file the said Writ Petition describing "Rajya Rashtriya Kamgar Sangh (INTUC) now Hindustan Petrol Pump Kamgar Union" as the petitioner. In view of the fact that the Order dated 1.9.2014 was passed by the Honourable Bombay High Court in the aforesaid Writ Petition No. 9772 of 2013 after hearing the learned counsel for the first party/Management, and no objection was taken by the first party/Management before the Honourable Bombay High Court regarding locus standi of the second party/Union, namely, Hindustan Petroleum Petrol Pump Kamgar Union to file Statement of Claim before this Tribunal or the Writ Petition before the Honourable Bombay High Court, it is no longer open to the first party/Management to question the locus standi of the second party/Union i.e. Hindustan Petroleum Petrol Pump Kamgar Union to file the Statement of Claim in the present Reference and to prosecute the present Reference.

69. There is another aspect of the matter. In view of the facts and circumstances stated above, the concerned workmen/concerned persons in the present Reference will be deemed to have acceded to their being represented by the second party/Union, and the second party/Union will be deemed to be party to the Reference, and the Award passed by this Tribunal will be binding on the concerned workmen/concerned persons in the present Reference as well as on the second party/Union representing the concerned workmen/concerned persons in the present Reference.

70. There is yet another aspect of the matter. As is evident from a perusal of the Reference Order dated 12.2.2007, list of the concerned workmen/concerned persons in the present Reference was enclosed with the Reference Order, and their demand was the subject-matter of the Reference. Thus, the concerned workmen/concerned persons in the present Reference were parties to the Reference, and Rajya Rashtriya Kamgar Sangh (INTUC) was only representing them. Therefore, it was the option of the concerned workmen/concerned persons in the present Reference to be represented by another Union, namely, Hindustan Petroleum Petrol Pump Kamgar Union (i.e., second party/Union), and they have evidently chosen to do so. As the concerned workmen/concerned persons

in the Reference have no objection to the second party/ Union representing them in the Reference, the objection raised by the first party/Management in this regard is mere technicality, and such objection cannot be accepted. Reference in this regard may be made to a decision of the Supreme Court in *The Manager, Hotel Imperial vs. The Chief Commissioner and Others*, AIR 1959 SC 1214: 1960 SCR (1) 279.

In view of the above discussion, it is held that Hindustan Petroleum Petrol Pump Kamgar Union (i.e., the second party/Union) has locus standi to prosecute the present Reference and file Statement of Claim on behalf of the concerned workmen/ concerned persons in the Reference. Issue Nos. 1 is decided Accordingly.

71. **ISSUE NO.2:** as noted above is “Whether any relationship of Employer and Workmen between Hindustan Petroleum Corporation Ltd. (hereinafter also referred to as “ the first party/Management” or “ the first party/ Company”) and the concerned persons has been proved by the second party/Union? If not, its effect?”

72. It is, inter-alia, averred in the Statement of Claim that 21 workmen whose names are mentioned in Annexure A are pursuing the matter; and that the demand as contained in the Reference is justified and proper to get the workmen regularized in services of Hindustan Petroleum Corporation Limited, who are working at Hindustan Petroleum Corporation Limited Petrol Pump at Chembur at par with Hindustan Petroleum Corporation Limited direct employees.

73. In the Written Statement filed on behalf of the first party/Company (Hindustan Petroleum Corporation Limited), it is, inter-alia, averred that the persons whose names are set out in the Annexure to the Order of Reference are not the employees of the first party/Company and were never employed by the first party/Company in any capacity whatsoever; and that there is/was no employer-employee relationship between the first party/Company and the persons whose names are set out in the Annexure to the Order of Reference.

74. Mr. Lancy D’Souza, learned counsel for the first party/Management submits that for grant of any relief as claimed in the present Reference, it is necessary that there should be relationship of employer-employee between Hindustan Petroleum Corporation Ltd. and the concerned workmen/ concerned persons in the present Reference. Unless this relationship is established and proved, no order can be passed against Hindustan Petroleum Corporation Limited in regard to the concerned workmen/ concerned persons in the present Reference. It is submitted that unless employer-employee relationship between Hindustan Petroleum Corporation Limited and the concerned workmen/ concerned persons in the present Reference is established, relief cannot be granted to the concerned workmen/ concerned persons in the present Reference as against Hindustan Petroleum Corporation Limited.

Elaborating his said submissions, Mr. Lancy D’Souza, learned counsel for the first party/Management has made following submissions:

- (1) As the demand raised by the concerned workmen/ concerned persons in the Reference is for Regularisation in the services of Hindustan Petroleum Corporation Limited (the first party/Management), it is open to Hindustan Petroleum Corporation Ltd (i.e., the first party/Management) to raise the question that the concerned workmen/concerned persons in the Reference were not workmen/employees of Hindustan Petroleum Corporation Ltd. (i.e, the first party/Management), and as such, there was no industrial dispute which could be referred to this Tribunal.

Mr. Lancy D’Souza, learned counsel for the first party/Management has placed reliance on the following decisions:

- (a) *Iqbal Ahmad Kamaruddin vs. P.L.Majumdar and Another*, 1992 I CLR 1034 (Bom) (Paras 6,7,8 and 9)
- (b) *Bongaigaon Refinery & Petrochemicals Ltd. vs. Samijuddin Ahmed*, 2001 III CLR 565 (SC) paras 6 and 7)
- (c) *Mukand Ltd vs Mukand Staff and Officers’ Association*, 2004 I CLR 1062 (SC) (paras 47 & 50)

- (2) It is for the second party/Union to aver and prove that the concerned workmen/concerned persons in the Reference were the workmen /employees of Hindustan Petroleum Corporation Ltd. (i.e., first party/Management). Reliance in this regard is placed by Mr.Lancy D’Souza, learned counsel for the first party/Management on a decision in *Somnath Tulshiram Galande vs Presiding Officer and Others*, 2008 I CLR 656 (Bom) (para 7).
- (3) In the Statement of Claim, there is no allegation that Hindustan Petroleum Corporation Ltd. appointed the concerned workmen / concerned persons in the Reference or they are employees of Hindustan Petroleum Corporation Ltd. What is alleged in the Statement of Claim is that they were working at the Petrol Pump in question since many years. However, it has not been specifically alleged as to under whose employment the concerned workmen/concerned persons in the present Reference were working. There is no pleading in the Statement of Claim as to who appointed the concerned workmen/concerned persons in the Reference, as to who has been controlling and supervising the concerned workmen/ concerned persons in the Reference, as to who has been paying the wages to the concerned workmen/ concerned persons in the Reference and as to who

has been having a right to dismiss or terminate the concerned workmen/concerned persons in the Reference. In the absence of the relevant pleadings, the second party/Union has failed to show any relationship of employer and employee between Hindustan Petroleum Corporation Ltd. and the concerned workmen/concerned persons in the Reference. Moreover, no evidence has been led on behalf of the second party/Union to prove much relationship.

- (4) There are no pleadings on behalf of the second party/Union that the Dealership Agreements entered into between Hindustan Petroleum Corporation Ltd. and various Dealers from time to time were sham and bogus. If the concerned workmen/concerned persons in the Reference claim to be the employees of Hindustan Petroleum Corporation Ltd. then there has to be pleading that the Agreements between Hindustan Petroleum Corporation Ltd. and various Dealers were sham and bogus but there is no such pleading on behalf of the concerned workmen/concerned persons in the present Reference.

No evidence has been led on behalf of the second party/Union to show that the Dealership Agreements were sham and bogus. Thus, the second party/Union has failed to aver and prove that the Dealership Agreements entered into between Hindustan Petroleum Corporation Ltd and various Dealers were sham and bogus. The onus was on the second party/Union. Reliance in this regard is placed by Mr.Lancy D'Souza, learned counsel for the first party/Management on a decision of the Supreme Court in General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon vs. Bharat Lal and Another, 2011 I CLR I (SC) (paras 8 and 9).

- (5) In the Written Statement filed on behalf of the first party/Management in respect of the Statement of Claim, it has been specifically pleaded in various paragraphs of the Written Statement that the concerned workmen/concerned persons in the present Reference were always the employees of the Dealers, and there was no Master and Servant relationship/ Employer and Employee relationship between Hindustan Petroleum Corporation Ltd. and the concerned workmen/concerned persons in the present Reference. Reliance is, inter-alia, placed on the averments made in paragraphs 10, 29, 30, 31, 38, 39, 40 and 41 of the Written Statement filed on behalf of the first party/Management in respect of the Statement of Claim.

It is submitted that in view of sub-rule (4) of Rule 10 B of the Industrial Disputes (Central) Rules, 1957, it was open to the second party/Union to file Rejoinder in respect of the Written Statement filed on behalf of

the first party/Management, but the second party/Union has chosen not to do so. Therefore, the averments made in the Written Statement have not been disputed by the second party/Union.

The averments made in the Written Statement have been proved by the Affidavit of Evidence sworn by Girish Vithalrao Raut (MW-1), and the said Affidavit of Evidence has gone unchallenged.

- (6) Assertions were made in the said Written Statement filed on behalf of the first party/Management, regarding all Dealership Agreements, and copies of all Dealership Agreements were also filed alongwith the List dated 14.11.2014. However, the second party/Union did not file any Rejoinder in reply to the Written Statement filed on behalf of the first party/Management even though sub-rule (4) of Rule 10 B of the Industrial Disputes (Central) Rules, 1957 permits the second party/Union to do so. Therefore, the averments made on behalf of the first party/Management in the Written Statement have not been disputed by the second party/Union.

The averments made in the Written Statement have been proved by the Affidavit of Evidence sworn by Girish Vithalrao Raut (MW-1), and the said Affidavit of Evidence has gone unchallenged. Thus, it has not been established by the second party/Union that the concerned workmen/concerned persons in the Reference were employees of Hindustan Petroleum Corporation Ltd. There is no denial regarding the averments made in the Written Statement filed on behalf of the first party/Management, which were proved by the Affidavit of Evidence of MW-1, that there is no relationship of Master and Servant/ Employer and Employee between Hindustan Petroleum Corporation Ltd. and the concerned workmen/concerned persons in the Reference.

- (7) Under the Industrial Disputes Act, 1947, Master and Servant relationship must be established. Unless such relationship is established, no relief can be granted to the concerned workmen/concerned persons in the present Reference as against Hindustan Petroleum Corporation Ltd.
- (8) In addition to the above, there are also admissions on record on behalf of the concerned workmen/concerned persons in the present Reference where they have accepted employer-employee relationship with the respective Dealers. Reference in this regard is made to the following :

- (a) Averments made in the Writ Petition No.2651 of 2007 filed before the Bombay High Court (Ex. M-7)appearing at page 60 of the documents filed on behalf of the first party/Management alongwith the List of Documents dated

14.11.2014.

- (b) Copies of Provident Fund Slips of workers (Ex-M-9) appearing at page 89 onwards of the documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014.
- (c) Copies of ESI Return (Ex-M 9) appearing at page 95 onwards of the documents filed on behalf of the first party/Management alongwith List of Documents dated 14.11.2014.
- (d) Order dated 22.1.2010 (Ex.M-11) passed by the Bombay High Court in Criminal Writ Petition No.54 of 2009, copy whereof appears at page 102 of the documents filed on behalf of the first party/Management alongwith List of Documents dated 14.11.2014.

In view of the admissions made by the concerned workmen/concerned persons in the present Reference in Judicial Proceedings before the Bombay High Court, the concerned workmen/concerned persons in the present Reference cannot be granted any relief as against Hindustan Petroleum Corporation Ltd. Reliance is placed on the decision of the Bombay High Court in Hindoostan Spinning and Weaving Mills, Mumbai vs. Hindustan Crown Mills Siddhivinayak Kamgar Karmachari Sanghaha Sanghatana and Others, 2008 – I LLJ 43 (Bom.) for the proposition that admission in pleadings before another Court are judicial admissions, and these can be made foundation of rights.

- (9) Documents pertaining to the proceedings under the Minimum Wages Act, 1948 in respect of M/s. Suburban Service Station appearing at pages 160, 163, 166, 171, 174, 176 and pages 179 to 196 of the Documents filed with the List of Documents dated 14.11.2014.. The said documents clearly show that the Dealer M/s. Suburban Service Station accepted the concerned workmen/concerned persons in the present Reference as the employees of the said Dealer.
- (10) The above documents show that there was no relationship of Employer and Employee between Hindustan Petroleum Corporation Ltd and the concerned workmen/concerned persons in the present Reference. Therefore, no relief can be granted to the concerned workmen/concerned persons in the present Reference as against Hindustan Petroleum Corporation Limited.
- (11) From 1.1.1977 till 4.5.2005, M/s.Chhagan Mitha & Co. was the dealer for running the Petrol Pump in question. From 4.5.2005 till May 2010, Mumbai Taxi Association was the dealer. From May 2010 till April 2012, M/s.Kapadia Bros. was the dealer. From 1.5.2012 till 30.9.2014, M/s.Suburban Service Station

was the dealer. With effect from 1.10.2014, Hindustan Petroleum Corporation Limited has appointed M/s.Renuka Enterprises as contractor or service provider, and not a dealer. There is basic difference between a “Dealer” and a “Contractor”. A “Contractor” is defined under Section 2 (c) of the Contract Labour (Regulation and Abolition) Act, 1970. The word “dealer” is not defined in the Industrial Disputes Act, 1947 or in the Contract Labour (Regulation and Abolition) Act, 1970. The dictionary meaning of the word ‘dealer’ is “a person who buys and sells goods.....as a principal (rather than as a broker or agent)”. Therefore, Dealership Agreements with various Dealers up to M/s. Suburban Service Station were on principal to principal basis where the dealer would buy the products of Hindustan Petroleum Corporation Limited and sell these products. Various clauses of the Agreement with M/s.Chhagan Mitha & Co. as well as with subsequent Dealers are referred to in this regard. Under the Dealership Agreements, the dealer was to employ his own persons to whom the payment was to be made by such dealer. The concerned workmen were employed by the dealers and thus were not the employees of Hindustan Petroleum Corporation Limited.

- (12) There are no pleadings in the Statement of Claim filed on behalf of the second party/Union that the Dealership Agreements were bogus or sham. From a perusal of the Dealership Agreements, it is evident that the concerned workmen were the employees of the Dealers, and there was no employer- employee relationship between Hindustan Petroleum Corporation Limited and the concerned workmen. As there is no challenge in the pleadings by the second party/Union to the genuineness of the Dealership Agreements, the Dealership Agreements would be deemed to be genuine. It is submitted that if there are no pleadings and even if there is evidence on the issue, such evidence cannot be looked into. Reliance in this regard is placed on the decision of the Supreme Court in Shankar Chakravarti v/s Britannia Biscuit Co. Ltd and Another, 1979 Labour and Industrial Cases 1192 (SC) (paragraphs 31 and 32)
- (13) Apart from the fact that there are no pleadings that the Dealership Agreements were sham and bogus, there are no pleadings that the concerned workmen were appointed by Hindustan Petroleum Corporation Limited, or that the concerned workmen were paid wages by Hindustan Petroleum Corporation Limited, or that the concerned workmen were under control and supervision of Hindustan Petroleum Corporation Limited. No appointment letters in respect of the concerned workmen have been brought on record.

In the absence of pleadings claiming Employer-Employee relationship with Hindustan Petroleum Corporation Limited, the second party/Union cannot seek any relief for the concerned workmen/concerned persons in the present Reference as against Hindustan Petroleum Corporation Limited.

- (14) As regards M/s.Renuka Enterprises appointed as Service Provider or Contractor w.e.f.1.10.2014, the relevant documents showing compliance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 have been filed on behalf of the first party/Management on 15.1.2015, alongwith the List of Documents dated 13.1.2015. One of the said documents is Certificate of Registration dated 28.10.2014 (Ex.M-24) granted in favour of Hindustan Petroleum Corporation Limited under Section 7(2) of the Contract Labour (Regulation and Abolition) Act, 1970, while the other document is Licence dated 18.11.2014 (Ex.M-25) granted under Section 12 of the said Act in favour of M/s. Renuka Enterprises. It is further submitted that even if there is failure to obtain Registration or Licence under the Contract Labour (Regulation and Abolition) Act, 1970, the same would not result in direct relationship of employer and employees between the principal employer and the contract labour. Reliance in this regard is placed on a decision of the Supreme Court in *Denanath and Others vs. National Fertilizers Limited and Others*, 1992 (1) CLR 1 (SC).

I have considered the submissions made by Mr. Lancy D'Souza, learned counsel for the first party/ Management on the question of relationship of employer-employee or Master and Servant between Hindustan Petroleum Corporation Limited and the concerned workmen/concerned persons in the present Reference. Submissions made by Mr.Lancy D'Souza, learned counsel for the first party/Management are being dealt with as under:

75. (A). A perusal of the Reference Order shows that the same pertains to the demand of the concerned workmen/concerned persons in the Reference for regularization in the services of Hindustan Petroleum Corporation Ltd. (i.e. first party/Management). It is, therefore, open to Hindustan Petroleum Corporation Ltd. (i.e. the first party/Management) to raise the question that the concerned workmen/concerned persons in the Reference were not the workers/ employees of Hindustan Petroleum Corporation Ltd. (i.e. first party/Management), and as such, there was no industrial dispute which could be referred to this Tribunal. This conclusion is supported by the Principles underlying the decisions relied upon by Mr. Lancy D'Souza, learned counsel for the first party/Management, namely, the decisions in (a) *Iqbal Ahmad Kamaruddin vs. P.L.Majumdar and Another*,

1992 I CLR 1043 (Bom) (paras 6, 7, 8 & 9); (b) *Bongaigaon Refinery and Petrochemicals Ltd vs. Samijuddin Ahmed*, 2001 III CLR 565 (SC) (paras 6 and 7); and (c) *Mukand Ltd. vs. Mukand Staff and Officers' Association*, 2004 I CLR 1062 (SC) (paras 47 & 50).

(B). For grant of any relief in the present Reference, it is necessary that there should be relationship of employer-employee between Hindustan Petroleum Corporation Ltd and the concerned workmen/concerned persons in the present Reference. Unless employer-employee relationship between Hindustan Petroleum Corporation Ltd and the concerned workmen/concerned persons in the present Reference is established, no relief can be granted to the concerned workmen/concerned persons in the present Reference as against Hindustan Petroleum Corporation Ltd. As the second party/Union is seeking relief of regularization of the concerned workmen/concerned persons in the present Reference, it is for the second party/Union to aver and prove that there was relationship of employer-employee between Hindustan Petroleum Corporation Ltd. and the concerned workmen/concerned persons in the present Reference. This follows from the Principles underlying the decision of the Bombay High Court in *Somnath Tushiram Galande vs. Presiding Officer And others*, 2008 I CLR 656 (Bom) (para 7).

(C). As regards pleadings on the question of relationship of employer and employee or Master and Servant between Hindustan Petroleum Corporation Ltd and the concerned workmen/concerned persons in the present Reference, reference may be made to paragraph 5 of the Statement of Claim. Paragraph. 5 of the Statement of Claim reads as under:

“The Second Party Union submits that the workers are working in the said petrol pump since many years and their date of joining services on the Hindustan Petroleum Corporation Ltd. Petrol Pump are mentioned in Annexure-B in this matter. The workers are working continuously for more than 240 days in a year for many years however they are denied permanency by the Government owned Corporation is a serious matter as it shows that the Central Government is not following Labour Laws. The Second Party Union submits that the HPCL Company appointed agents on their behalf to run the business for them. The Second Party Union submits that the name of the Petrol Pump is Hindustan Petroleum, the logo on uniform is of Hindustan Petroleum. This clearly shows that the Petrol Pump is owned and managed and controlled by Hindustan Petroleum Corporation Ltd.”

76. In paragraph 5 of the Statement of Claim quoted above, it has, inter-alia, been alleged that “the workers are working in the said Petrol Pump since many years and their day of joining services on the Hindustan Petroleum Corporation Ltd. Petrol Pump are mentioned in in Annexure ‘B’ ”. It is, inter-alia, further averred that “the HPCL Company appointed Agents on their behalf to run the business for them”. It is, inter-alia, further averred that the “name of the Petrol Pump is Hindustan Petroleum, the logo on uniform is of Hindustan Petroleum. This clearly shows that the Petrol Pump is owned and managed and controlled by Hindustan Petroleum Corporation Ltd.”.

77. It will thus be seen that the case of the second party/ Union is that the Petrol Pump is owned and managed and controlled by Hindustan Petroleum Corporation Ltd. The concerned workmen/concerned persons in the present Reference joined services on the said Petrol Pump and have been working in the said Petrol Pump since many years. It is, however, admitted by the second party/Union that Hindustan Petroleum Corporation Ltd. appointed Agents on their behalf to run the business for them.

78. In view of the above, it is evident that there are no pleadings on behalf of the second party/Union as to who appointed the concerned workmen/concerned persons in the present Reference for working in the said Petrol Pump. Again, there are no pleadings as to who was paying the wages to the concerned workmen/concerned persons in the present Reference.

79. It is again, not pleaded as to who had power to dismiss the concerned workmen/concerned persons in the present Reference. While it is averred that Petrol Pump is owned, managed and controlled by Hindustan Petroleum Corporation Ltd., there is no specific pleading as to under whose control and supervision, the concerned workmen/concerned persons in the present Reference were working. Thus, no proper foundation has been laid in the pleadings submitted on behalf of the second party/Union to show the existence of employer and employee relationship between Hindustan Petroleum Corporation Limited and the concerned workmen/concerned persons in the present Reference. Moreover, no evidence has been led on behalf of the second party/Union to prove such relationship.

(D) In Written Statement filed on behalf of the first party/Management in respect of the Statement of Claim, it was pleaded that the concerned workmen were appointed by the Dealers and they were employees of the Dealers and they were not the employees of Hindustan Petroleum Corporation Limited. Reference in this regard may made to the averments made in paragraphs 10, 29, 30, 31, 38, 39, 40 and 41 of the Reply filed on behalf of the first party/Management in respect of the aforementioned Statement of Claim. The said paragraphs of the Reply are reproduced below:

“10. It is submitted that in furtherance of the obligations under the contract of dealership dated January 1, 1977, M/s. Chhagan Mitha and Company selected and appointed their own employees for administering and managing the petrol pump. The service conditions of the personnel appointed by the dealers, such as their wages, leave, bonus, work timings etc. were determined by the said dealer and First Party did not have any say of any nature whatsoever in this regard. Further, the work of these personnel, appointed by the dealer, was supervised and controlled by the dealer themselves or through supervisors appointed by the dealer”.

“29. It is submitted that from the above chronology of fact/events, it is apparent that the persons whose names are set out in the Annexure the Order of Reference are not the employees of First Party and were never employed by the First Party in any capacity whatsoever. It is submitted that there is/ was no employer-employee relationship between the First Party and the persons whose names are set out in the Annexure to the Order of Reference. It is submitted that the workmen concerned in the present Reference were engaged by M/s. Mumbai Taxi Association without any pressure, directives or directions or requisition of any nature whatsoever off or from the first Party. It is subsequently, some of the workmen among said workmen were engaged by M/s. Kapadia Brothers who was subsequent ad-hoc dealer. Thereafter M/s. Suburban Service Station employed about 21 workers among 37 workmen under Reference. It is submitted that First Party is not aware of and is also not concerned in any manner whatsoever with the terms of employment and/or engagement of the persons concerned in the present Reference with various ad-hoc dealers”.

“30. It is submitted that First Party is not the employer of the persons whose names are listed in the Schedule to the Reference. It is submitted that the said workmen cannot be termed as workmen of First Party, as defined under Section 2(s) of the Industrial Disputes Act, 1947. Thus, there is no employer-employee relationship between the First Party and the said workmen. In the absence of such a relationship, the dispute raised by the said Second Party as against the First Party cannot be termed as an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947.”

“31. It is submitted that there was/is no supervision or control of whatsoever nature over these persons by the First Party. It is submitted that First Party has not, at any point of time whatsoever, paid the salary or allowances or other benefits to the persons concerned in the present Reference. It is submitted

that First Party cannot be vested with any responsibility or liability regarding wages or discriminatory treatment, if any given to these persons. It is submitted that the dispute raised by Second Party on behalf of said persons does not hold good and is absolutely bad in the eyes of law. It is submitted that Second Party has no locus standi to raise such industrial dispute against First Party”.

“38. It is submitted that payment of wages to the concerned workmen under reference has been made/ is being made by their employer i.e. the Dealer/ad-hoc Dealer and First Party has never made any payment of wages to the said workmen at any point of time.”

“39. It is submitted that Dealer/ad-hoc Dealer has been granting/is granting leaves to the said workmen as per the provisions of the applicable law and First Party has never granted any leave to the said workmen.”

“40. It is submitted that entire control and supervisions of the said workmen under Reference is with their employer i.e. Dealer/ad-hoc Dealer and First Party does not at all supervises or controls the jobs of said workmen.”

“41. It is submitted that Disciplinary Action, if any, against the said workmen, under Reference, is taken by the concerned Dealer/ ad-hoc Dealer who is the employer, and First Party has never taken any Disciplinary Action against the said workmen.”

It may be mentioned that the averments made in the Written Statement filed on behalf of the first party/ Management in respect of the Statement of Claim have been supported by the Affidavit of Evidence of Girish Vithalrao Raut (MW-1) filed on behalf of the first party/ Management.

80. It is noteworthy that in view of the sub-rule (4) of Rule 10B of the Industrial Disputes (Central) Rules, 1957, the second party/Union could file Rejoinder in reply to the Written Statement filed on behalf of the first party/ Management. But the second party/Union did not file any Rejoinder in respect of the Written Statement filed on behalf of the first party/Management, and thus, the averments made in the Written Statement were not disputed by the second party/Union.

Further, the Affidavit of Evidence of Girish Vithalrao Raut (MW-1) remained unchallenged.

81. Again, specific averments were made in the Written Statement filed on behalf of the first party/Management in respect of the Statement of Claim regarding various Dealership Agreements. Further, amongst documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014, copies of various Dealership Agreements were filed. However, the second

party/Union did not file any Rejoinder regarding the averments made in respect of various Dealership Agreements in the Written Statement filed on behalf of the first party/Management even though sub-rule (4) of Rule 10B of the Industrial Disputes (Central) Rules, 1957 permits the second party/Union to do so. Thus, the existence and genuineness of various Dealership Agreements have not been disputed by the second party/Union.

Moreover, no evidence has been led on behalf of the second party/Union to show that the Dealership Agreements were sham and bogus.

82. Thus, the second party/Union has failed to aver and prove that the Dealership Agreements entered into between Hindustan Petroleum Corporation Ltd. and various Dealers were sham and bogus. The onus was on the second party/ Union. This follows from the principles underlying the decision of their Lordships of the Supreme Court in General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon vs. Bharat Lal and Another, 2011 I CLR I (SC) (paras 8 and 9).

(E) As noted earlier, it has been pleaded on behalf of the first party/Management that the concerned workmen/concerned persons in the present Reference were recruited by Dealers and they were employees of the Dealers, and there was no relationship of employer and employee between Hindustan Petroleum Corporation Limited and the concerned workmen/concerned persons in the present Reference. In this regard, it is noteworthy that there are admissions on record on behalf of the concerned workmen/concerned persons in the present Reference where it has been accepted that there was employer-employee relationship between the concerned workmen/concerned persons in the present Reference and the respective Dealers. Thus, in Writ Petition No.2651 of 2007(Ex.M-7) filed by Deepak Tanaji Kamble on behalf of the concerned workmen/ concerned persons in the present Reference(see paragraph 2 of the Writ Petition), M/s. Chhagan Mitha & Co. was impleaded as Respondent No.5 while Mumbai Taxi Association was impleaded as Respondent No.6. Hindustan Petroleum Corporation Ltd. was impleaded as Respondent No.2 in the said Writ Petition. In paragraph 2 of the said Writ Petition, it is, inter-alia, stated that “the Petitioner submits that there are about 37 employees including the petitioner are working with Respondent No.5”. It is, inter-alia, further alleged in paragraph 2 of the Writ Petition that “the petitioner submits that Hindustan Petroleum Petrol Pump, Hindustan Petroleum Corporation Ltd. Companies out-let is taken over by Bombay Taxi Men Association. The Petitioner submits they are deducting Provident Fund Contribution from 37 employees including the Petitioner from May 2005”. It is, inter-alia, further

averred in paragraph 2 of the Writ Petition that “the Petitioner submits that they have contributed for the E.S.I.C. Scheme still their employers i.e. Respondent Nos. 5 and 6 have not given benefits of the Scheme under the Employees’ State Insurance Act, 1948”. Prayer was made in the said Writ Petition for action being taken against the Respondent Nos.5 and 6 for non-compliance with the provisions of Employees’ State Insurance Act, 1948 as also for not depositing with the Provident Fund Authority, the amounts of Provident Fund deducted in respect of the 37 employees including the petitioner. Copy of the said Writ Petition (Ex.M-7) appears at page 60 of the Documents filed on behalf of the first party/Management alongwith the List dated 14.11.2014.

83. It is further noteworthy that in the said Writ Petition No.2651 of 2007, a Reply –Affidavit (Ex.M-9) was filed on behalf of Mumbai Taxi Association (Respondent No. 6 in the said Writ Petition), copy whereof appears at page 86 of the Documents filed on behalf of the first party/Management alongwith the List dated 14.11.2014. Alongwith the said Reply-Affidavit, copies of Provident Fund slips in respect of the concerned workmen were filed which appear at pages 89 to 93 of the Documents filed on behalf of the first party/Management alongwith the List dated 14.11.2014. In the said Provident Fund slips, the name of employer has been shown as Bombay Taxi Association. Again, alongwith the said Reply-Affidavit, copy of E.S.I Return in Form -6 has been filed which appears at page 95 of the Documents filed on behalf of the first party/Management alongwith the List dated 14.11.2014. The said E.S.I. Return was submitted by Mumbai Taxi Association as the Employer.

84. Again, another Writ Petition, namely, Criminal Writ Petition No.54 of 2009 (Ex. M-11) was filed by the aforesaid Deepak Tanaji Kamble. M/s. Chhagan Mitha & Co. was impleaded as the Respondent No.5 while Mumbai Taxi Association was impleaded as the Respondent No.6 in the said Writ Petition Hindustan Petroleum Corporation Ltd. was impleaded as the Respondent No.2 in the said Writ Petition. The said Writ Petition was filed on behalf of the 37 employees as is evident from the averments made in paragraph 2 of the said Writ Petition. In paragraph 1 of the said Writ Petition, it was averred that “the Petitioner is employee of Respondent No.5and Respondent No.6..... He is in service with Respondent No.5 Petrol Pump since 1977 and now he is in service with Respondent No.6”. In paragraph 2 of the said Writ Petition, it is averred that “the Petitioner submits that there are about 37 employees including the petitioner are working with Respondent No.5 and now with Respondent No.6”. It is further averred in paragraph 2 of the Writ Petition that “the Petitioner submits that Respondent No.5 is M/s. Chhagan Mitha & Company Petrol Pump with whom the Petitioner and other 37 workmen were working on outlet of Hindustan

Petroleum. The Petitioner submits that Respondent No.6 is the present employer i.e. Mumbai Taxi Association Co-operative Consumer Society Ltd., Mumbai which is out-let of Hindustan Petroleum”.

85. Prayer is made in the said Writ Petition No. 54 of 2009 for initiating action against the Respondent Nos. 5 and 6 by filing prosecution in the Court of Law for violating the provisions of Employees’ State Insurance Act, 1948 as also for not depositing the Contributions of Provident Fund deducted from the Petitioner and other workmen. Copy of the said Writ Petition (Ex.M-11) appears at page 107 of the Documents filed on behalf of the first party/Management alongwith the List dated 14.11.2014.

86. The said Writ Petition No. 54 of 2009 was disposed of by their Lordships of the Bombay High Court by the order dated 22.1.2010 (Ex.M-11), copy whereof has been filed at page 102 of the Documents filed on behalf of the first party/Management alongwith the List dated 14.11.2014.

87. It will thus be seen that in the aforesaid Writ Petitions filed on behalf of the concerned workmen/concerned persons in the present Reference, the Dealers were described as the employers of the concerned workmen/concerned persons in the present Reference, and not Hindustan Petroleum Corporation Ltd. Prayers were made seeking reliefs against the Dealers. Their Lordships of the Bombay High Court passed order dated 22.1.2010 in the said Criminal Writ Petition No.54 of 2009 disposing of the said Writ Petition having regard to the grievance raised in the said Writ Petition. Thus, in the judicial proceedings before the Bombay High Court, the concerned workmen/concerned persons in the present Reference maintained that they were employees of the Dealers, and there was no claim that they were employees of Hindustan Petroleum Corporation Limited.

88. Reference may be made to the decision in Hindoostan Spinning and Weaving Mills case, 2008-I LLJ 43 (Bom) (para 67), relied upon by Shri Lancy D’Souza, learned counsel for the first party/Management. In the said case, their Lordships of the Bombay High Court have opined that the statements in pleadings are admissions against the Party making them. Admissions in pleadings are judicial admissions. They can be made foundation of rights. Admission in the Written Statement in some other case is an important piece of evidence.

(F) Besides above, there are various documents pertaining to proceedings under the Minimum Wages Act, 1948 which have been relied upon by the first party/Management in support of its plea regarding there being no relationship of employer and employee between Hindustan Petroleum Corporation Limited and the concerned workmen, while such relationship being there between the Dealers and the concerned workmen. An application under Section 20(2) of the Minimum Wages Act, 1948 (Ex.M-17) was filed by

the Labour Enforcement Officer against M/s. Suburban Service Station, copy whereof appears at page 160 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. In paragraph 3 of the said application, it is stated that the Opponent (M/s. Suburban Service Station) “is an employer as defined under Section 2 (e) of the Minimum Wages Act, 1948”. In paragraph 1 of the said application, it is, inter-alia, stated “that the Opponent has been engaged in Retailer of HPCL Petrol Pump (Re-filling and Service) at Sion-Trombay Road, Mumbai by engaging 9 workers in scheduled employment.....”

89. From the averments made in the said application, it further appears that the Labour Enforcement Officer visited the site and prepared an Inspection Note as also the List of workmen. At the time of inspection, 9 workmen were found at the site as is recorded in the Inspection Note (Ex.M-17), copy whereof appears at page 163 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. The said Inspection Note in Item 1 mentions the name of establishment as “M/s. Suburban Service Station”. In Item 2 dealing with the name of employer, the same name i.e. M/s. Suburban Service Station has been mentioned as the employer. In Item 4(a) dealing with the nature of the work of the establishment, it is mentioned “Retailer of HPCL Petrol Pump (Ref and Service) at Chembur”. List of 9 workmen (Ex.M-17) appears at page 166 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. The said 9 workmen are included in the concerned workmen/concerned persons in the present Reference involved in the present Reference.

90. In the said proceedings under the Minimum Wages Act, 1948, M/s. Suburban Service Station filed its Reply (Ex.M-19), copy whereof appears at page 171 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. In paragraph 2 of the said Reply, M/s. Suburban Service Station has stated that “as per condition 16 of the said letter Opponent has to employ at their own cost persons for all the jobs required to be carried out.....and the persons so appointed shall not be construed under any circumstances to be working under the Corporation (HPCL). Section 2(e) defines employer and Hindustan Petroleum Corporation Limited have not employed any of the workers at Petrol Pump. As per requirement Opponents have appointed required staff including casual workers The Opponents have applied on 12.10.2012 for Factory License with Director of Industrial Health and Safety, Maharashtra which is in process. There is no employer- contractor relationship between Opponent and Hindustan Petroleum Corporation Limited”.

91. Thus, the above documents pertaining to the proceedings under the Minimum Wages Act, 1948 show that the Dealer M/s. Suburban Service Station was treated to be employer of the concerned workmen/concerned persons in the present Reference, and the said position was accepted by M/s. Suburban Service Station. M/s. Suburban Service Station denied that any of the workers at Petrol Pump was employed by Hindustan Petroleum Corporation.

92. It is further relevant to note that in the proceedings under the Minimum Wages Act, 1948, M/s. Suburban Service Station filed Additional Reply (Ex.M-20) alongwith copies of the wage register which appear at pages 179 to 196 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. A perusal of the wage register shows that the name of establishment/employer has been mentioned as M/s. Suburban Service Station. These documents again show that M/s. Suburban Service Station was the employer of the concerned workmen.

(G) In Reference No.CGIT-18 of 2007 wherein similar controversy is involved, Mumbai Taxi Association (i.e. “Society”) has been impleaded as a party, and it has filed its Written Statement (Ex.M-6), copy whereof appears at page 54 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. Certain paragraphs of the said Written Statement have been referred to by Shri Lancy D’Souza, learned counsel for the first party/Management in support of his submissions. Sub-para (d), (f), (g), (h), (i) and (j) of paragraph 3 of the said Written Statement which have been referred to by the learned counsel for the first party/Management are reproduced below:

“(d) The Society submits that soon after the aforesaid petrol pump was given by H.P.C.L. on conducting basis; it retained the employees who were working therein without any continuity of service. The Society was neither the successor in interest of Chhagan Mitha nor did it acquire the ownership or rights of the said petrol pump from its erstwhile owner. The assignment of conducting of the said petrol pump was given by H.P.C.L. for a specified period. The Society, in order to ensure that its members as well as the customers having patronage to the said petrol pump are given prompt, efficient and proper service, delegated some of its employees from other petrol pump to the Chembur Petrol Pump. This was to provide better service to the customers as well as improve the sales, which otherwise was very much low and working was uneconomical. It was largely with the efforts of the delegated employees, that the sales improved”.

“(f) The Society, herein that it was allotted the petrol pump situated at Chembur by Hindustan Petroleum Corporation Ltd. Admittedly, the said petrol pump, prior to being allotted, was functional. The Society on taking over the operation and functioning of the said petrol pump, the same of which was for a specific period, preferred to give employment to the existing employees. Since the Society was already allotted a code number by the E.S.I. Corporation and the Provident Fund Authority, the contributions in respect of the workmen were deposited in the code number allotted to the Society. The records thus reveal that the employees working with the Society were not in permanent capacity by that being already employed by the erstwhile Employer was given employment by the Society. The Society denies that it had 37 workmen working in the said petrol pump under its employment.”

“(g) The Society submits that the workmen employed in working under the society for a specified period in the said petrol pump were provided with all the statutory benefits including Bonus”.

“(h) The Society submits that the conducting of the said petrol pump was for the Corporation. The Society was neither the owner of the premises nor the petrol pump. So much so, the products sold in the said petrol pump were neither manufactured nor owned by the Society. They were infact, were owned by the Corporation”.

“(i) The Society submits that it is not aware as to how long the workmen were parties in the above reference were working in the said pump. It is, however true that the society engaged the services of their workmen who were already working in the said pump for a period till it was permitted by the Corporation to operate the pump. The Society submits that the names of 37 persons together with the details of service record are not true and correct. The Society undertakes to submit the list of the workmen who were in its employment during the period it was conducting the operations of the said pump”.

“(j) The Society submits that it is true and correct that the pump is popularly known as Chhagan Mitha Petrol Pump. The Society is not aware as to who were the owners and or the persons who were running the pump prior to the same being allotted by the Corporation to the Society. The Society denies that it had reduced the previous wages of the workmen as alleged. It is not aware of the wages as earlier earned by the workmen. However subsequent of being allotted, the Society

had been paid without any deduction and reduction”.

93. In sub-para (f) of paragraph 3, quoted above, Mumbai Taxi Association has stated that “the Society on taking over the Operation and Functioning of the said Petrol Pump, the same of which was for a specific period, preferred to give employment to the existing employees”. Again, in sub-para (i) of paragraph 3 of the Written Statement, Mumbai Taxi Association has stated that “ It is however true that the Society engaged the services of their workmen who were already working in the said Pump for a period till it was permitted by the Corporation to operate the Pump”. It is thus evident that Mumbai Taxi Association admitted that it took in its employment workmen who were already working in the Petrol Pump in question. There is thus admission by Mumbai Taxi Association that the concerned workmen/concerned persons in the present Reference were in its employment.

94. The averments made in sub-para (f) of paragraph 3 of the Written Statement that “ the Society denies that it had 37 workmen working in the said Petrol Pump under its employment”, is to be read in the context of the entire averments made in sub-para (f) wherein, as noted above, Mumbai Taxi Association has stated that “the Society on taking over the operation and functioning of the said Petrol Pump, the same of which was for a specific period, preferred to give employment to the existing employees”. The averment made in sub-para (f) of paragraph 3 of the Written Statement that “the Society denies that it had 37 workmen working in the said petrol pump under its employment”, refers to the denial in respect of the number of workmen working in the petrol pump and not in regard to the factum of the workmen being in the employment of Mumbai Taxi Association. This is further evident from the averments made in sub-para (i) of paragraph 3 of the Written Statement wherein it has been averred that “the Society submits that the names of 37 persons together with the details of service record are not true and correct”.

(H) As noted earlier, from 1.1.1977, till 4.5.2005, M/s. Chhagan Mitha & Co. was the Dealer. From 4.5.2005 till May 2010, Mumbai Taxi Association was ad-hoc Dealer. From May 2010 till April 2012, M/s. Kapadia Bros. was ad-hoc Dealer. From 1.5.2012 till 30.9.2014, M/s. Suburban Service Station was ad-hoc Dealer. Thereafter w.e.f. 1.10.2014, M/s. Renuka Enterprises has been appointed as Service provider or Contractor, and not a dealer. Question arises as to what was the status of various Dealers vis-a-vis Hindustan Petroleum Corporation Ltd. Whether Dealer appointed under the Dealership Agreement and Contractor appointed under the Contract Labour (Regulation and Abolition) Act, 1970 are different, or there is no difference between the two. In this regard, it is noteworthy that the word “Dealer” has not been defined in the Industrial Disputes Act, 1947 or in the

Contract Labour (Regulation and Abolition) Act, 1970. The word ‘contractor’ has been defined in clause (c) of sub-section (1) of Section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 as under:

“contractor”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor”.

Thus “Contractor” in relation to an establishment, means a person

(i) Who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacturer to such establishment, through contract labour

Or

(ii) Who supplies contract labour for any work of the establishment

and includes a sub-contractor.

95. As the word “Dealer” is not defined, as noted above, in the Industrial Disputes Act, 1947 or in the Contract Labour (Regulation and Abolition) Act, 1970, it will be relevant to refer to the dictionary meaning of the word ‘Dealer’. In Concise Oxford English Dictionary, 11th Edition, the meaning of the word ‘Dealer’ has been given as under:

“1. A person who buys and sells goods - a person who buys and sells shares or other financial assets as a principal (rather than as a broker or agent).

2. A player who deals cards in a card game”.

96. Thus, one of the meanings of the word “Dealer” is “a person who buys and sells goods as a principal (rather than as a Broker or Agent)”.

97. Keeping in view the meanings of the word “Contractor” and “Dealer”, let us now refer to various Clauses of the Dealership Agreement dated 1.1.1977 (Ex.M-2) between Hindustan Petroleum Corporation Ltd (i.e. “the Corporation”) and M/s. Chhagan Mitha & Co. (i.e. the “Dealer”). It may be mentioned that the said Agreement was executed in the Standard Dealership Agreement of Hindustan Petroleum Corporation Ltd. It may further be mentioned that in respect of subsequent ad-hoc Dealers also, the terms and conditions as contained in the Standard Dealership Agreement were made applicable as is evident from the Documents filed on the record on behalf of the first party/Management alongwith the Reply to the aforementioned Interim Relief Application.

98. The Agreement dated 1.1.1977, inter-alia, recites that “And Whereas the Corporation is the Owner/Lessee of a plot of land.....and of the structures thereon.....and has installed and/or is about to instal at and under the said premises the apparatus and equipment.....(hereinafter called “the outfit”)). The said Agreement, inter-alia, further recites that” And Whereas at the request of the dealer the Corporation has agreed to appoint the dealer as its dealer for the retail sale or supply at the said premises of certain petroleum products on the terms and conditions hereinafter contained”. Clause 1 of the said Agreement states that “the Corporation hereby appoints the dealer as its dealer for the retail sale or supply at the said premises of Petrol/Diesel/Motor Oils/Greases and such other products as may hereafter be specified by the Corporation from time to time (All of which are hereinafter collectively referred to as “the Products”) in accordance with the terms and conditions hereunder appearing”.

99. Clause 2 of the Agreement states that “the Corporation doth hereby grant to the dealer leave and licence and permission for the duration of this agreement to enter on the said premises and to use the premises and outfit for the sole and exclusive purpose of storing, selling and handling the products purchased by the dealer from the Corporation, save as aforesaid, the dealer shall have no right, title or interest in the said premises or outfit and shall not be entitled to claim the right of lessee, sub-lessee, tenant or any other interest in the premises or outfit, it being specifically agreed and declared in particular that the dealer shall not be deemed to be in exclusive possession of the premises.”

100. From the above Clauses of the Agreement, it is evident that while the premises and outfit belonged to Hindustan Petroleum Corporation Ltd, the said Corporation granted leave and licence and permission to the dealer to enter on the said premises and to use the said premises and outfit for the sole and exclusive purpose of storing, selling and handling the products purchased by the Dealer from the Corporation. Thus, the products were to be purchased by the Dealer from the Corporation.

101. Clause 5 of the said Agreement, inter-alia, provides that “for the use of the said premises including the construction thereon and outfit, the dealer shall pay to the Corporation a monthly licence fee of Rs.400 payable in advance on the first day of each calendar month, free of all deductions.....” Hence, the Dealer was required to pay licence fee to the Corporation for the use of the said premises and outfit as mentioned above.

102. Clause 4 of the said Agreement provides that “the Licence and permission granted as aforesaid for the use of the said premises and outfit shall terminate immediately on the termination of this agreement or on any breach of any of the terms thereof.”

103. Clause 6 of the said Agreement, inter-alia, states that “the dealer will instal and maintain at his own expense at the said site the equipment described in the III Schedule hereto and such other equipment as may be considered necessary by the Corporation from time to time and intimated to the Dealer. The Dealer shall purchase the said equipment only from the manufacturer or manufacturers approved by the Corporation”. Thus, various equipment were to be purchased, installed and maintained by the Dealer at the said site.

104. Clause 8 of the said Agreement, inter-alia provides that “the Corporation will from time to time supply to the Dealer such quantities of the products as the Corporation may consider expedient to meet the current day demands, and the Dealer shall maintain such stocks thereof as the Corporation may consider adequate or necessary from time to time.....”

105. Clause 9 of the said Agreement, inter-alia, provides that “the Dealer undertakes to further the sales of the products supplied by the Corporation. It is specifically agreed and declared that it is a basic condition of the grant of the Dealership rights by the Corporation to the Dealer herein that the Dealer hereby agrees, undertakes and covenants to uplift and pay for the following minimum quantity of the products supplied by the Corporation per year.....”

106. Clause 10 of the said Agreement, inter-alia, provides that “the Corporation will deliver its said products to the Dealer at the rates therefor ruling on the date of delivery. The Corporation will make delivery of products to the Dealer against payment in Cash or by Demand Draft.....”

107. It will thus be noticed that the Dealer was required to uplift and pay for the products supplied by the Corporation. Further, as noted above, the Dealer was required to pay licence fee for the use of the premises and outfit belonging to the Corporation. The Dealer was also required to purchase, instal and maintain various equipment at the site. These provisions of the Agreement clearly show that the “Dealer” under the Dealership Agreement is different from the “Contractor” under the Contract Labour (Regulation and Abolition) Act, 1970 as such requirements are not to be fulfilled by a Contractor under the said Act.

108. Clause 13 of the said Agreement, inter-alia, states that “the Corporation has installed at its own expense at and under the premises the outfit described in the Second Schedule hereunder written. The Corporation may instal at the premises such other apparatus and equipment from time to time as it may deem necessary for the efficient working of the Retail Outlet and all such other apparatus and equipment shall be deemed to be and form part of the outfit.....”

109. Clause 14 of the said Agreement provides that “the Corporation will maintain the outfit in proper working condition at its own expense.”

110. Clause 15 of the said Agreement, inter-alia, provides that “the Dealer will take such care of the outfit and of the building and structures on the premises as also of the receptacles or containers in which the Corporation’s products will be supplied to him as a business man of ordinary prudence would take of like premises, outfit, receptacles and containers belonging to himself.....”

111. Clause 16 of the said Agreement, inter-alia, lays down that “No repairs to the outfit shall be done by the Dealer unless previously authorized by the Corporation in writing.....”

112. Clause 18 of the said Agreement, inter-alia, provides that “the Dealer shall not remove the outfit or any part thereof from its position on the said premises nor deliver possession thereof to any other person, Firm or Company other than the Corporation.....”

113. Clause 19 of the said Agreement provides that “the said premises and outfit shall be and remain the absolute property of the Corporation and the Corporation may at any time enter upon the said premises to inspect, test, repair, add to reduce and/or remove the outfit of the buildings and structures on the premises or any part thereof, affix the Corporation’s name plates thereto and lock and/or seal the whole or any part thereof against interference by the Dealer or third parties”.

114. Clause 21 of the said Agreement provides that “the Dealer will at all times keep and maintain clean intact and legible on the said premises and outfit, all trademarks and other signs and marks of identification of the Corporation placed thereon by the Corporation or forming part thereof.”

115. Clause 22 of the said Agreement, inter-alia, lays down that “the Dealer shall not add to or alter the premises layout or outfit in any manner whatsoever.....”.

The above Clauses of the Agreement show that the premises and outfit belonged to the Corporation, and the Dealer was required to take reasonable care thereof as a prudent business man. The Corporation was also authorized to take appropriate steps to safeguard its interest in respect of the premises and the outfit.

116. Clause 27 of the said Agreement provides that “The Dealer shall not during the currency of this agreement sell or be in any way be concerned in selling the petroleum products of any other Oil Company or Producer through the outfit or at the premises without the previous consent in writing of the Corporation”.

117. Clause 28 of the said Agreement lays down that “The Dealer shall not purchase from any person, Firm or Company other than the Corporation Petroleum or allied products used, stocked, or sold at the said premises, without the previous consent in writing of the Corporation”.

118. Clause 29 of the said Agreement provides that “The Dealer shall not make supplies of petroleum products of the Corporation to any other person, Firm or Company whose supplies have been stopped by the Corporation.”

119. Clause 30 of the said Agreement provides that “the Dealer shall not make supplies of petroleum products of the Corporation to any Dealer/Agent/Distributor appointed by any of the other Oil Companies”.

The above Clauses are evidently incorporated as the Dealer was granted licence to use the premises and outfit belonging to Hindustan Petroleum Corporation Ltd. for the sale of products of the said Corporation, and it could not be left open to the Dealer to deal in the products of other Oil Companies.

120. Clause 31 of the said Agreement, inter-alia, provides that “The Dealer shall not sell the Corporation’s products at higher rates or prices than those which the Corporation or the Competent Central /State Government shall time to time prescribe.....”.

The above Clause is evidently incorporated keeping in view the nature of products which were to be sold by the Dealer.

121. Clause 35 of the said Agreement, inter-alia, provides that “the Dealer shall not do any act whereby the Corporation’s rights in its trademarks or any of them be jeopardized.....”.

122. Clause 36 of the said Agreement provides that “The Dealer will provide and maintain the standard of courtesy and service for the public in all respects as established by the Corporation from time to time.....”.

123. Clause 37 of the said Agreement lays down that “The Corporation will be entitled at all times to enter into and inspect the Management of the Retail Outlet by the said Dealer in all respects and the Dealer shall be bound to render all assistance and give all information to the Corporation and its duly authorized Representatives in that behalf”.

124. Clause 38 of the said Agreement lays down that “The Dealer shall keep and maintain such records of sales etc. as may be prescribed by the Corporation and submit the same for inspection on demand by any Officer of the Corporation.”

125. Clause 39 of the said Agreement provides that “The Dealer shall not carry on from the said premises any business other than that of the sale of the products supplied by the Corporation save and except and only to the extent, if any, to which the Dealer may be permitted in writing by the Corporation at its sole discretion to carry on such other business at or from the said premises.”

126. Clause 40 of the said Agreement provides that “the Corporation will obtain in its name a storage licence from the Controller of Explosives for the storage of petroleum products at the said premises. The dealer shall faithfully

observe and perform all the terms and conditions of such licence(s).”

127. Clause 42 of the said Agreement, inter-alia provides that “the Dealer undertakes faithfully and promptly to carry out, observe and perform all directions or rules given or made from time to time by the Corporation for the proper carrying on of the Dealership of the Corporation.....”

128. Clause 43 of the said Agreement, provides that “the Dealer shall indemnify and save harmless the Corporation from all losses, damages, claims, suits or actions which may arise out of or result from any injury to any person or property or any violation of any statutory enactments, rules or regulations or other written orders or other laws or caused by or resulting from non-observance by the Dealer of the provisions of this agreement”.

The above Clauses have evidently been incorporated in the Agreement in order to safeguard the interest of the Corporation which has granted dealership to the Dealer.

129. Clause 46 of the said Agreement provides that “The Dealer shall be solely responsible for and shall himself bear all expenses of and in connection with the Dealership Business, including Administration, Office, Insurance Premia, Telephone, Licence or other fees, rates, taxes and all other charges and outgoing of every kind connected with the said business and shall pay the same promptly and without fail. The Dealer shall also be solely responsible for any breach or contravention by himself, his servants or Agents of any laws, rules, regulations or byelaws passed or made by the Central and /or State Government and/or Municipal, local and/or other authorities as may be applicable from time to time to the business including, without prejudice to the generality of the foregoing, the concerned authorities respectively appointed under the Petroleum Act, Payment of Wages Act, Shops and Establishments Act, Factories Act, and the Workmen’s Compensation Act, or any statutory modifications or re-enactments of the said statutes or rules and the Corporation shall not be responsible in any manner for any liability arising out of non-compliance by the Dealer with the same. The Dealer shall at all times indemnify and keep indemnified the Corporation against all actions, proceedings, claims and demands made against it by the Central Government and/or State Government and/or Municipal, Local and/or other Authorities and/or by any Customer of the product and/or by any other third party as a result of or in consequence of any act or omission of whatsoever nature of the Dealer, his servants or Agents, including, without prejudice to the generality of the foregoing, any accident or loss or damage arising out of the storage, handling and/or sale of the products or attributable to the use of the said premises for the aforesaid purposes whether or not such act or omission or accident or loss or damage was due to any negligence, want of care or skill or any misconduct of the Dealer, his servants or agents.”

130. Clause 47 of the said Agreement provides that “the Dealer shall at his own cost maintain an adequate and competent staff to attend to the work of filling the Corporation’s products into the Customers’ vehicles and for providing certain free service to the Customers in accordance with the general instructions given or laid down by the Corporation from time to time.”

From the above Clauses, it is evident that the Dealer is solely responsible for all expenses of and in connection with the Dealership Business. The Dealer has to maintain his own staff for doing the Dealership Business. The Dealer is solely responsible for any breach or contravention of various laws by himself, his servants or Agents. The Dealer has to keep indemnified the Corporation against all actions, proceedings etc. on account of any act or omission of whatsoever nature of the Dealer, his servants or Agents.

131. From an analysis of the Recitals and various Clauses of the said Agreement dated 1.1.1977, the following position emerges:

- (i) The premises and the outfit belong to Hindustan Petroleum Corporation Ltd.
- (ii) The Dealer was appointed for the retail sale or supply at the said premises of Petrol/Diesel/Motor Oils/Greases etc. in accordance with the terms and conditions contained in the said Agreement.
- (iii) The Dealer was granted leave and licence and permission for the duration of the agreement to enter on the said premises and to use the said premises and outfit for the sole and exclusive purpose of storing, selling and handling the products.
- (iv) The products were to be purchased by the Dealer from the Corporation.
- (v) For the use of the said premises and outfit, the Dealer was required to pay monthly licence fee of Rs.400/-
- (vi) The Dealer was to instal and maintain at his own expense at the said site the equipment necessary for doing the business.
- (vii) The Dealer was to maintain its own staff for doing the Dealership business and the Dealer was solely responsible for all the expenses etc in connection with the Dealership business.
- (viii) The Dealer was solely responsible for act or omission on the part of the Dealer, his servants or Agents.
- (ix) The Dealer was solely responsible for any breach or contravention of statutory requirements under various laws.
- (x) Various rights were given to the Corporation

under the Agreement including right of inspection etc. so that the Corporation may ensure that the premises and outfit belonging to the Corporation were not adversely affected by any act or omission on the part of the Dealer and also to ensure that the terms and conditions laid down in the Agreement were complied with by the Dealer.

- (xi) Various terms and conditions were laid down in the agreement which were to be complied with by the Dealer so as to ensure that the Dealership undertaken by the Dealer was properly run and the interest of the Corporation is not adversely affected.
- (xii) Subject to complying with various terms and conditions laid down in the Agreement and keeping within the limits laid down in the Agreement, the Dealer had full discretion to carry on the business of the retail sale or supply of Petrol etc. at the petrol pump in question.

132. From the above, it is evident that the Dealership Agreement dated 1.1.1977 entered into between Hindustan Petroleum Corporation Ltd and M/s. Chhagan Mitha & Co. was an agreement on principal to principal basis where the Dealer would buy the products of Hindustan Petroleum Corporation Ltd and sell these products in accordance with the terms and conditions laid down in the Agreement. The said conclusion is supported by the Dictionary meaning of the word “Dealer”, as noted earlier.

133. As regards the averment made in paragraph 5 of the Statement of Claim that “the Petrol Pump is owned and managed and controlled by Hindustan Petroleum Corporation Ltd”, I am of the opinion that an analysis of various Clauses of the Agreement shows that the premises and the outfit belonged to Hindustan Petroleum Corporation Limited, and in order to safeguard its interest therein, various rights were given to the Corporation under the said Agreement. Further, as the Dealer was to do the business of the retail sale or supply of the products of Hindustan Petroleum Corporation Ltd in accordance with the terms and conditions of the Agreement, various rights were given to the Corporation under the Agreement in order to ensure compliance of the terms and conditions of the said Agreement. However, within the limits laid down in the Agreement and in accordance with the terms and conditions laid down in the Agreement, the Dealer was free to do the business of retail sale or supply of petrol etc. at the petrol pump in question with its own staff, and the Dealer was solely responsible for act or omission on the part of the Dealer or his servants or agents. Thus, even though the premises and the outfit belonged to Hindustan Petroleum Corporation Ltd, the Corporation was not having control over the business of the Dealer conducted in the petrol pump in question and the employees employed by

the Dealer for doing the said business. Therefore, from the terms and conditions as contained in the agreement, it does not follow that the employees employed by the Dealer were the employees of the Corporation.

134. (I) As noted earlier, the Standard Dealership Agreement of Hindustan Petroleum Corporation Ltd was also made part of the agreement entered into with subsequent ad-hoc Dealers also. Reference in this regard may be made to the letter dated 4.5.2005 (Ex.M-4) issued by Hindustan Petroleum Corporation Ltd to Mumbai Taxi Association appointing the latter as ad-hoc Dealer. Copy of the said letter dated 4.5.2005 appears at page 18 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. It was, inter-alia, stated in Clause 13 of the said letter that “in the operation of the said Outlet, the terms and conditions as contained in our Standard Dealership Agreement shall apply to the extent they are not inconsistent with your said appointment on a temporary basis...”.

135. Clause 3 of the said letter provided that “Accordingly, we hereby appoint you as a temporary Dealer to operate the said Outlet solely on temporary basis subject to termination by either party giving to the other 15 days written notice in that behalf”.

136. Clause 5 of the said letter, inter-alia, stated that “We hereby give you the necessary leave and licence and permission for the duration of this temporary arrangement to enter on the premises including the structure.....We also hereby give you the necessary licence to use the apparatus and equipment installed and/or is about to be installed at the said premises.....”

137. Clause 6 of the said letter provided that “the Corporation doth hereby grant to you the leave and licence and permission for the duration of this arrangement to enter on the said premises and to use the premises and outfit for the sole and exclusive purpose of storing, selling and handling the products purchased by you from the Corporation. Save as aforesaid you shall have no right, title or interest in the said premises or outfit. It is being specifically agreed and declared in particular that you shall not be deemed to be in exclusive possession of the premises”.

138. Clause 9 of the said letter provided that “You shall pay to the Corporation Service Station Licence fee and such charges, which may be applicable under the Corporation’s rules by ways of compensation for use of occupation of the site, structures and outfit”.

139. Clause 7 of the said letter provided that “The said arrangement shall remain in force for a period of one year commencing from 4.5.2005 appointment of a regular dealer or till terminated earlier by the Corporation as hereinafter

stated. If felt necessary, the said arrangement can be renewed at the sole discretion of the Corporation for a period of another one year.” The Agreement as contained in the said letter dated 4.5.2005 was renewed from time to time as is evident from the Extension letters (Ex M-5) appearing at pages 21, 22, 28 and 29 of the Documents filed on behalf of the first Party/Management alongwith the List of Documents dated 14.11.2014.

140. The Agreement with M/s. Mumbai Taxi Association came to an end in May 2010. Thereafter, by the letter dated 10.5.2010 (Ex.M-13), M/s. Kapadia Bros was appointed as ad-hoc Dealer. Copy of the letter dated 10.5.2010 (Ex.M-13), appears at page 142 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014.

141. Clause 13 of the said letter dated 10.5.2010, inter-alia, provided that “in the operation of the said Outlet, the terms and conditions as contained in our Standard Dealership Agreement shall apply to the extent they are not inconsistent with your said appointment on a temporary basis.....”.

142. Clause 17 of the said letter dated 10.5.2010 provided that “you shall at your own cost employ persons, for all the jobs required to be carried out by you for operation and maintenance of the Retail Outlet during the period of the arrangement and the persons so appointed shall not be construed under any circumstances to be working under the Corporation”.

143. Clause 15 of the said letter dated 10.5.2010, inter-alia, provided that “you shall comply with the provisions of the following Acts and all amendments/ modifications thereto or re-enactment thereof or any other law relating thereto and Rules made thereunder from time to time and comply with all provisions therein and/or make all the payments specified therein.....”.

144. Mention in the said Clause was made to 11 Statutes including Payment of Wages Act, 1936, Workmen’s Compensation Act, 1923, Industrial Disputes Act, 1947 etc.

145. Clause 12 of the said letter dated 10.5.2010 provided that “the statutory licences as are normally required for running the Dealership shall be in your name and you shall be responsible for all aspects of running the retail outlet”.

146. Ad-hoc Dealership of M/s. Kapadia Bros continued till April 2012. Thereafter, by the letter dated 30.4.2012 (Ex. M-14), M/s. Suburban Service Station was appointed as ad-hoc Dealer. Copy of the said letter dated 30.4.2012 (Ex.M-14) appears at page 149 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014.

147. Clause 12 of the said letter dated 30.4.2012, inter-alia, provided that “in the operation of the said Outlet, the terms and conditions as contained in our Standard

Dealership Agreement shall apply to the extent they are not inconsistent with your said appointment on a temporary basis....”

148. Clause 4 of the said letter dated 30.4.2012, inter-alia, provided that “We hereby give you the necessary leave and licence and permission for the duration of this temporary arrangement to enter on the premises including the structure which belongs to the Corporation.....” (hereinafter referred to “premises”). We also hereby give you the necessary license to use the apparatus and equipment installed and/or about to be installed at the said premises. The apparatus and equipment are described in the annexed Schedule as Schedule II (hereinafter called “outfit”).

149. Clause 5 of the said letter dated 30.4.2012, inter-alia, provided that “the Corporation doth hereby grant to you the leave and licence and permission for the duration of this arrangement to enter on the said premises and to use the premises and outfit for the sole and exclusive purpose of storing, selling and handling the products purchased by you from the Corporation....”

150. Clause 8 of the said letter dated 30.4.2012 provided that “you shall pay to the Corporation Service Station Licence fee and such charges, which may be applicable under the Corporation’s rules by ways of compensation for use and occupation of the site, structures and outfit”.

151. Clause 11 of the said letter dated 30.4.2012 provided that “the statutory licences as are normally required for running the Dealership shall be in your name and you shall be responsible for all aspects for running the retail outlet”.

152. Clause 16 of the said letter dated 30.4.2012 provided that “you shall at your own cost employ persons, for all the jobs required to be carried out by you for operation and maintenance of the Retail Outlet during the period of the arrangement and the persons so appointed shall not be construed under any circumstances to be working under the Corporation”.

153. Clause 17 of the said letter dated 30.4.2012, inter-alia, provided that “all payments shall be made by you to the Labour employed by you in accordance with the various rules and regulations stated above.....”.

154. Clause 6 of the said letter dated 30.4.2012 provided that “the said arrangement shall remain in force for a period of one year commencing from 1.5.2012, till appointment of a regular dealer or till terminated earlier by the Corporation as hereinafter stated. If felt necessary, this said arrangement can be renewed at the sole discretion of the Corporation for a period of another one year.”

155. Clause 7 of the said letter dated 30.4.2012, inter-alia, provided that “the Corporation shall always be at liberty to terminate this arrangement and your licence hereinabove granted at any time by giving to you 15 days notice, without assigning any reason and without any liability to pay any compensation to you.....”.

156. Agreement as contained in the letter dated 30.4.2012 appointing M/s. Suburban Service Station as ad-hoc Dealer for the petrol pump in question was renewed from time to time as is evident from the Extension letters (Ex.M-15) appearing at pages 154, 155, 156, 157 and 158 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014.

157. Letter dated 30.7.2014, appearing at page 158 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014, extended the ad-hoc Dealership of M/s. Suburban Service Station till 30.9.2014. The said letter, inter-alia, stated that “hence we wish to inform you that you have to continue the ad-hoc operations on temporary basis till 30.9.2014.” It is, inter-alia, also stated in the said letter that “please note that the terms and conditions as mentioned in the above referred letter dated 30.4.2012 will remain unchanged.”

158. By the letter dated 1.9.2014, (Ex.M-16), appearing at page 159 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014, the ad-hoc Dealership of M/s. Suburban Service Station was terminated with effect from 30.9.2014.

159. It will thus be noticed that the Agreements entered into with various ad-hoc Dealers subsequent to the termination of the Dealership Agreement with M/s. Chhagan Mitha & Co., contained similar terms and conditions as were there in the Dealership Agreement with M/s. Chhagan Mitha & Co. In the Agreements with ad-hoc Dealers, it was clearly provided that ad-hoc Dealers will employ persons at their own cost for all the jobs in relation to the running of the Retail Outlet and the persons so appointed would not be construed under any circumstances to be working under the Corporation. Hence in view of the discussion in respect of M/s. Chhagan Mitha & Co. the Dealership Agreements with subsequent ad-hoc Dealers were also on principal to principal basis. In the circumstances, the averment made in paragraph 5 of the Statement of Claim that “the HPCL Company appointed agents on their behalf to run the business for them”, cannot, in my view, be accepted.

(J) From an analysis of the Dealership Agreement between Hindustan Petroleum Corporation Ltd and M/s. Chhagan Mitha & Co. and also Dealership Agreements with subsequent ad-hoc Dealers, it is evident that M/s. Chhagan Mitha & Co. and the subsequent ad-hoc Dealers were doing the business as Dealers in their own rights. For their business, they employed the concerned workmen as their own employees. Neither M/s. Chhagan Mitha & Co. nor any of the subsequent ad-hoc Dealers was covered under the definition of “Contractor” as contained in Clause (c) of sub-section (1) of Section 2 of the Contract Labour (Regulation and Abolition) Act, 1970. In this regard, it is pertinent to refer to the Reply (Ex.M-18) filed on behalf of Hindustan

Petroleum Corporation Ltd in the proceedings under the Minimum Wages Act, 1948 initiated against M/s. Suburban Service Station as mentioned earlier. Copy of the said Reply appears at page 167 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. In paragraph 11 of the said Reply, it is stated on behalf of Hindustan Petroleum Corporation Ltd that “It is submitted that the Retail Outlet Dealer so appointed through a valid dealership agreement cannot be termed as ‘Contractor’ as defined in Contract Labour (Regulation and Abolition) Act, 1970 and therefore, the Provisions of Contract Labour (Regulation and Abolition) Act, 1970 are not applicable in respect of the persons so engaged by the dealer i.e. M/s. Suburban Service Station in the instant matter and said persons cannot be termed as Contract Labourers”.

160. As regards M/s. Renuka Enterprises, it has been noted earlier that M/s. Renuka Enterprises has been appointed as service provider or contractor. As pointed out earlier, on 15.1.2015, documents have been filed on behalf of the first party/Management alongwith the List of Documents dated 13.1.2015. One of the said Documents is Certification of Registration dated 28.10.2014 (Ex.M-24) granted in favour of Hindustan Petroleum Corporation Ltd. under Section 7(2) of the Contract Labour (Regulation and Abolition) Act, 1970, while the other document is Licence dated 18.11.2014 (Ex.M-25) granted under Section 12 of the said Act in favour of M/s. Renuka Enterprises. Thus, in case of M/s. Renuka Enterprises, the requirements of the Contract Labour (Regulation and Abolition) Act, 1970 have been complied with.

(K) It is open to Hindustan Petroleum Corporation Ltd to entrust the work of marketing its products to dealers appointed under the dealership agreements who would do the business in the products of Hindustan Petroleum Corporation Ltd. This practice was continuously adopted by Hindustan Petroleum Corporation Ltd since the appointment of M/s. Chhagan Mitha & Co. as Dealer under the Dealership Agreement dated 1.1.1977. The practice continued till the term of M/s. Suburban Service Station came to an end on 30.9.2014. The Dealers were doing their business as per the terms and conditions of the Dealership Agreements through the employees appointed by the Dealers. The successive Dealers in their own discretion continued to employ the concerned workmen as their employees, and Hindustan Petroleum Corporation Ltd was evidently having no say in the matter. The concerned workmen were not the employees of Hindustan Petroleum Corporation Ltd. After M/s. Suburban Service Station, Hindustan Petroleum Corporation Ltd. appointed M/s. Renuka Enterprises as service

provider or contractor. Copy of the Agreement dated 30.9.2014 (Ex.M-22), between Hindustan Petroleum Corporation Ltd and M/s. Renuka Enterprises appears at page 199 of the Documents filed on behalf of the first party/Management alongwith the List of Documents dated 14.11.2014. It is stated in the said agreement that “ And Whereas the Corporation desires to run a Retail Outlet for retail sale or supply of Petrol/Diesel/Motor Oils/Grease and such other products as may hereafter be specified by the Corporation from time to time at the said premises (hereinafter referred to as COCO/COMCO) by its own officials pending selection and appointment of a regular Dealer”. It is, further stated in the said Agreement that “ And Whereas the Corporation intends to engage ‘the service provider’ in performing various jobs as mentioned herein at the said COCO/COMCO to be operated by the Corporation on the following terms and conditions.” Clause 2.1 of the said Agreement enumerates the jobs to be performed by the service provider at the said COCO/COMCO as per the requirement and need in the manner directed by the Corporation.

161. Clause 12.1 of the said Agreement provides that “the service provider shall at his own cost employ suitable qualified persons for all the jobs required to be carried out by him under this agreement”.

162. Clause 12.2.1 of the said Agreement provides that “the persons so appointed shall not be construed under any circumstances to be working under the Corporation”. Clause 12.3 provides that “all payments shall be made by the Service Provider to his employees in accordance with the various Rules and Regulations stated above.....”

163. It will thus be noted that pending selection and appointment of a regular Dealer, the Corporation has appointed M/s. Renuka Enterprises as the Service Provider for performing various jobs at the petrol pump in question as enumerated in the said Agreement, and for performing the said jobs, the Service Provider has to employ its own employees, and such employees will not be the employees of the Corporation. Thus, the Service Provider has to employ its own employees, and Hindustan Petroleum Corporation Ltd has no say in the matter. M/s. Renuka Enterprises in its discretion has appointed its own employees.

(L) It may be mentioned that having title to and control over the assets using which a business is run, is different from having title to and control over the business which is run using such assets. Various provisions have been incorporated in the Dealership Agreement in order to safe-guard and protect the assets which belonged to the Corporation. Similarly, the business run by the Dealer in the Petrol Pump in question was in respect of the products manufactured by the Corporation. Therefore, various provisions

have been incorporated in the Dealership Agreement in order to safe-guard and protect the reputation, good-will and trade-mark etc. of the Corporation in respect of the products in respect of which the Dealer was doing business. Again, as the business belonged to and was run by the Dealer by employing its own employees, various provisions have been incorporated in the Dealership Agreement to protect the Corporation from any action/claim etc on account of defaults of the Dealer or his servants etc. However, as noted earlier, subject to complying with terms and conditions laid down in the Agreement and keeping within the limits laid down in the Agreement, the Dealer had full discretion to carry on the business of the retail sale or supply of Petrol etc. at the petrol pump in question.

(M) In view of the above discussion, it is evident that the second party/Union has failed to establish relationship of employer and employee between Hindustan Petroleum Corporation Ltd and the concerned workmen/concerned persons in the present Reference. Consequently, it is held that the second party/Union has not proved any relationship of Employer and Workmen/Employee between Hindustan Petroleum Corporation Limited (i.e., the first party/Management or the first party/Company) and the concerned workmen/concerned persons in the present Reference. Therefore, the concerned workmen/concerned persons in the present Reference were not in the employment of Hindustan Petroleum Corporation Ltd (i.e, the first party/Management or the first party/Company). As such, no relief can be granted to the second party/Union in respect of the concerned workmen/concerned persons in the present Reference as against Hindustan Petroleum Corporation Ltd., (i.e, the first party/Management or the first party/Company).

Issue No.2 is decided accordingly.

164. **ISSUE NO.3:** is “Whether the demand of the concerned persons for regularization of their services in the services of Hindustan Petroleum Corporation Limited (i.e. “the first party/Company” or “the first party/Management”) at par with the direct employees of Hindustan Petroleum Corporation Ltd. (i.e. “the first party/Company” or “the first party/Management”) is justified and proper?”.

165. As noted earlier, it is, inter-alia, stated in the Statement of Claim that the demand contained in the Reference is justified and proper to get regularized services of the concerned workmen/concerned persons in the present Reference in Hindustan Petroleum Corporation Limited, who are working at Hindustan Petroleum Corporation Limited Petrol Pump at Chembur at par with Hindustan Petroleum Corporation Limited direct employees.

In the Written Statement filed on behalf of Hindustan Petroleum Corporation Limited (i.e, the first party/Management or the first party/Company), the said demand has been disputed on various grounds as detailed earlier.

166. It is submitted by Mr.Lancy D’Souza, learned counsel for the first party/Management that the question of regularization of services of the concerned workmen/concerned persons in the present Reference in the services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) would only arise if there is relationship of employer and employee/workmen between Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) and the concerned workmen/concerned persons in the present Reference. In the absence of any such relationship, the submission proceeds, there cannot be any question of regularization of the services of the concerned persons in the services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) at par with the direct employees of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”). It is submitted that as no relationship of employer-employee/workmen between Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) and the concerned workmen / concerned persons in the present Reference has been established, the demand of the concerned workmen/concerned persons in the present Reference for regularization of their services in the services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) at par with the direct employees of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) is liable to be rejected. It is further submitted by Mr.Lancy D’Souza, learned counsel for the first party/Management that Hindustan Petroleum Corporation Ltd is Government of India Undertaking, and it is covered within the definition of “State” as contained in Article 12 of the Constitution of India. Recruitment in the services of Hindustan Petroleum Corporation Ltd is done through Public Notification by following due Recruitment procedure which is followed by Government of India/Public Sector Undertakings. Grant of relief to the concerned workmen/concerned persons in the present Reference for regularization in the services of Hindustan Petroleum Corporation Ltd would amount to back-door entry and would be hit by Article 14 of the Constitution of India.

167. I have considered the submissions made by Mr.Lancy D’Souza, learned counsel for the first party/Management.

168. In Issue No.2, it has been held that no relationship of Employer and Employee/Workmen between Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) and the concerned workmen / concerned persons in the present Reference has been established. Evidently therefore, the concerned workmen/concerned persons in the Reference are not in the employment or services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) in any capacity whatsoever. Consequently, there cannot be any question of regularization of the alleged services of the concerned workmen / concerned persons in the present Reference in Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”). It is to be noted that regularization in the services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) would only be possible if there is any subsisting relationship of Employer-Employee/Workmen between Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) and the concerned workmen / concerned persons in the present Reference, and the concerned workmen/concerned persons in the present Reference are in the employment or services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) in any capacity. There being no relationship of Employer-Employee/Workmen between Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) and the concerned workmen / concerned persons in the present Reference, the concerned workmen/concerned persons in the Present Reference are not in the employment or services of Hindustan Petroleum Corporation Ltd in any capacity whatsoever. As such, no relief of regularization of services in Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) can be granted to the concerned workmen / concerned persons in the present Reference. Reference in this regard may be made to a decision of the Gauhati High Court in WP (C) 255 (K) of 2011, *Dr.Atonzo Pienyu and others vs. The State of Nagaland & Others*, decided on 14.11.2014, relied upon by Mr.Lancy D’Souza, learned counsel for the first party/Management. In paragraph 13 of the decision, it was, inter-alia, observed that “Regularization in service law connotes official formalization of an appointment which was made on stop gap/ad-hoc basis without following normal rules of appointment. Such formalization makes the appointment regular”.

169. There is another aspect of the matter. As submitted by Mr.Lancy D’Souza, learned counsel for the first party/Management Hindustan Petroleum Corporation Ltd is a Government of India Undertaking and is covered within the purview of “State” under Article 12 of the Constitution of India [See: *Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli*, (2007) 6 SCC 81, 88 (para 13)]. Recruitment in services of Hindustan Petroleum Corporation Ltd is to be done by due Public Notification and in accordance with the Due Recruitment Procedure which is required to be followed as per the relevant Rules, Regulations, Notifications etc., issued in this regard. It is not permissible for Hindustan Petroleum Corporation Ltd to make any recruitment de-hors relevant Rules, Regulations, Notifications etc., and without due Public Notification. Granting Regularization to the concerned workmen/ concerned persons in the present Reference, in the services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) would evidently amount to recruiting these persons through back-door without complying with the relevant Rules, Regulations, Notifications etc., and without due Public Notification, and such action on the part of Hindustan Petroleum Corporation Ltd would be hit by Article 14 of the Constitution of India.

170. In this regard, reference may be made to the decision of the Supreme court in *Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India and Another*, 2014 II LLJ 54 (SC). In this case, the judgements in *Secretary, State of Karnataka vs. Umadevi and Others* [AIR 2006 SC 1806: (2006) 4 SCC 1 : 2006-II-LLJ 222], *U.P. Power Corporation vs. Bijlee Mazdoor Sangh and Others* [2007] 5 SCC 755: 2007 – II- LLJ – 832] and *Maharashtra State Road Transport Corporation and Another vs. Casteribe Rajya Parivahan Karmachari Sanghatana* [(2009) 8 SCC 556: 2009 – IV-LLJ-286], were considered by their Lordships of the Supreme Court, and on harmonious reading of the latter two Judgments, their Lordships of the Supreme Court observed as under (paragraph 34):

“On harmonious reading of the two judgements discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wager worker/adhoc/ temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further,

such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise, and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provisions”.

This decision thus lays down, amongst others, the following principles:

- (1) Normally direction to regularize cannot be given as the same amounts to backdoor entry into the service which is anathema to Article 14 of the Constitution of India.
- (2) However, If the employer has granted regularization to similarly situated workmen under some scheme or otherwise then the aggrieved workmen who have not been granted regularization may approach Industrial/Labour Court for appropriate relief.

171. In the present case, neither any averment has been made on behalf of the second party/ Union nor any evidence has been led on behalf of the second party/Union to show that any workman who is similarly situated as the concerned workmen/concerned persons in the present Reference has been granted regularization in the services of Hindustan Petroleum Corporation Ltd. Therefore, the present case does not fall under Principle No.2 mentioned above but falls under Principle No.1 mentioned above. Hence, grant of relief of regularization to the concerned workmen/concerned persons in the Reference, in the services of Hindustan Petroleum Corporation Ltd would amount to back-door entry, and the same would be hit by Article 14 of the Constitution of India.

172. In view of the above discussion, I am of the opinion that the demand of the concerned workmen/concerned persons in the present Reference for regularization of their alleged services in the services of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) at par with direct employees of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) is neither justified nor proper.

Issue No.3 is decided accordingly.

173. **ISSUE NO. 4 :** Issue No. 4 is “To what relief, if any, the second party/ Union is entitled?”

174. In view of the findings recorded on Issue No.2 and Issue No.3 above, I am of the opinion that no relief can be granted to the second party/Union in the present Reference. It is, therefore, held that no relief can be granted to the second party/Union.

Issue No.4 is decided accordingly.

175. In view of the above discussion, the Reference is answered by stating that the demand of the concerned workmen / concerned persons in the present Reference for regularization of their alleged services in Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) at par with the direct employees of Hindustan Petroleum Corporation Ltd (“the first party/Management” or “the HPCL” or “the Corporation” or “the First Party / Company”) is neither justified nor proper. No relief in this regard can be granted in respect of the concerned workmen/ concerned persons in the present Reference.

Award is passed accordingly.

Justice S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 475.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 695/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/03/2016 को प्राप्त हुआ था।

[सं. एल-41012/228/99-आईआर (बी-1)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 9th March, 2016

S.O. 475.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 695/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 09/03/2016.

[No. L-41012/228/99-IR (B-I)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi, Presiding Officer
CGIT-cum-Labour Court,
Ahmedabad,
Dated 11th January, 2016

Reference: (CGITA) No. 695/2004

1. The Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda-390004
2. The Asst. Engineer (North),
Western Railway,
Bharuch (Gujarat) ...First Party

Vs.

Their Workman
Sh. Ambalal Chhagan,
Through the Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole,
Kothi,
Baroda-390001 (Gujarat) ...Second Party

For the First Party : -
For the Second Party : -

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 41012/228/99/-IR(B-I) dated 24.12.1999 referred the dispute for adjudication to the Industrial Tribunal, Baroda (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Railway Administration of Baroda Division, Baroda through its officers, in terminating the services of Shri Ambalal Chhagan, Gangman by way of ‘Removal from railway services with immediate effect vide NIP dated 17.04.1998 is legal, proper and justified?’”

And

“whether the punishment of ‘Removal from service’ is proportionate to the gravity of alleged misconduct. If not, to what relief the concerned workman Shri Ambalal Chhagan is entitled to and what directions are necessary in the matter?”

2. This reference dates back to 24.12.1999. Second party submitted the statement of claim first party also filed the written statement. Despite giving dozens of opportunities to second party to lead the evidence, they did not prefer to give their evidence. Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 476.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 23/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/03/2016 को प्राप्त हुआ था।

[सं. एल-12025/01/2016-आईआर (बी-1)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 9th March, 2016

S.O. 476.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 09/03/2016.

[No. L-12025/01/2016-IR (B-I)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

ID No. 23 of 2013

filed directly U/S 2(a) 2 of the amended ID Act, 1947

Sh. Krishan Kumar Ghawri,
C/o #1432, Sector-15,
Panchkula, Haryana

...Workman

Versus

1. General Manager,
State Bank of India,
Local Head Office,
Chandigarh.
2. Deputy General Manager-
cum-Circle Dev. Officer,
State Bank of India,
Sector 17A, Chandigarh.
3. Dy. General Manager,
State Bank of India,
Admin Office, Punjab.

4. Branch Manager,
State Bank of India,
Muktsar Branch, Punjab ...Respondents

Appearances :

For the Workman : None
For the Management : Sh. S.K. Gupta Advocate

AWARD

Passed on 27.01.2016

1. Workman Krishan Kumar Ghawri filed the present case under amended Section 2 of the ID Act, 1947 directly before this court against the management of State Bank of India in view of the certificate dated 28.11.2011 issued by the Assistant Labour Commissioner(Central), Chandigarh.

2. Today the case was fixed for evidence of the workman. None is appearing on behalf of the workman for the last many hearing. It appears that the workman is not interested to pursue with the present dispute. In view of the above, the present dispute is returned to the Central Govt. for want of prosecution.

3. The dispute is returned accordingly. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
27.01.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 477.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एक्सिस प्रतिभूति और सेल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 87/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/03/2016 को प्राप्त हुआ था।

[सं. एल-12012/65/2013-आईआर (बी-1)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 9th March, 2016

S.O. 477.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of M/s. Axis Securities and Sales Ltd. and their workmen, received by the Central Government on 09/03/2016.

[No. L-12012/65/2013-IR (B-I)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

ID No. 87 of 2013

Reference No. L-12012/65/2013-IR(B-I) dated 24.07.2013

Sh. Narinder Pal Singh son of
Shri Bohar Singh, resident of
House No. 1706/628,
Street No.4, Preet Nagar,
Shimla Puri Ludhiana (Punjab)

...Workman

Versus

1. The Managing Director,
M/s. Axis Securities and Sales Ltd,
Corporate Office, 5th Floor,
Bombay Mutual Annexe,
Gunbow Street, Off.D.No. Road,
Fort,Mumbai-400001.

2. The Branch Manager,
M/s. Axis Securities and Sales Ltd.,
7th Floor, 108, The Mall,
Surya Tower, Ludhiana-141002

...Respondents

Appearances :

For the Workman : Shri B.N. Sehgal Advocate

For the Management : Shri Anil Kumar Kalia Advocate

AWARD

Passed on 14.01.2016

Government of India Ministry of Labour vide notification No. L-12012/65/2013-IR(B-I) dated 24.07.2013 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Axis Security and Sales Ltd Ludhiana in dismissing the services of Shri Narinder Pal Singh w.e.f. 20.4.2010 is legally just and valid? To what relief the workman concerned is entitled and from which date?”

2. In brief the case of the workman is that he was appointed by Axis Sales Limited which was converted into Axis Securities and Sales Ltd. It is pleaded that although he was designated as Team Leader (grade S-1) in the Home Loan Department, however he was never performed any administrative, managerial or supervisory duties but his main duties were of sales i.e. operational duties and he was covered under the definition of workman as defined under Section 2(s) of the ID Act. His salary was fixed as Rs. 11900/- and later on increased to Rs. 13250/- and he was confirmed in service w.e.f. 9.6.2008 vide letter dated 19.9.2008. It is pleaded by the applicant that he was placed under suspension and he was also issued a charge sheet dated

19.3.2010. The applicant sent reply to the charge sheet by speed post on 26.3.2010 and the same must have been received by the management on 27.3.2010. The management dismissed him from services vide order dated 20.4.2010. It is further pleaded that the applicant submitted an application dated 6.5.2010 for recall/ review of the dismissal order but his application was rejected vide order dated 25.5.2010 which is illegal, wrong, null and void, arbitrary and against the rules and against the principles of natural justice as no departmental enquiry was held against the applicant. The complaint on the basis of which the applicant was dismissed from service had been withdrawn by the complainant Shri Charan Singh. It is further pleaded by the applicant that he was not given any notice, notice pay and retrenchment compensation and his juniors were retained in services and other employees were appointed after his services were terminated. The management violated the mandatory provisions of section 25F,N,G and H of the I.D.Act 1947. It is further prayed by the applicant that the management may be directed to reinstate the workman with continuity of services with full back wages and with costs as the applicant could not secure any other alternative employment inspite of his best efforts.

3. The management filed reply in which the plea has been taken that the claim is not maintainable under the I.D.Act 1947 and he has no locus standi and no cause of action to file the present claim. It is further pleaded by the management that the applicant is not “workman” as defined under Section 2(s) of the I.D.Act 1947 therefore, this Tribunal has no jurisdiction to try and to adjudicate upon the present dispute. On merits the management pleaded that the applicant was performing the duties of Team Leader(Sales) and was fully responsible for achieving targets through sales team member who were directly working under the control and supervision of the applicant who was performing the duties in managerial capacity. It is further pleaded that admittedly the applicant was drawing salary of Rs. 13250/-PM and so he is not covered under the definition of the workman.. It is further pleaded that applicant indulged in unethical practice of taking money from the client of the management and the said client made complaint to the management in writing and due to which the applicant was suspended w.e.f. 9th of March 2010. The applicant was issued show cause notice as described in Company code of Conduct NO.13.3. The applicant failed to reply to the notice within stipulate time and the disciplinary authority passed the order of dismissal of service vide order dated 20.05.2010. It is further pleaded by the management that one Charan Singh himself made a complaint with regard to unlawfully taking money and now the same Charan Singh gave a letter stating that now there is nothing recoverable from the applicant which clearly indicates that the applicant unlawfully taken money from Charan Singh. The applicant also failed to file reply to the show cause notice within stipulated time. The management

prayed that as the management has lost confidence upon the applicant therefore, the claim of the applicant may be dismissed with cost being devoid of merits.

4. The applicant filed replication to the written statement in which he has reiterated that he is a workman as defined under Section 2(s) of the I.D.Act 1947.

5. In evidence, the applicant filed his own affidavit as Ex.W1 and documents Ex.W2 to W13. In evidence the management filed one affidavit of Shri Tarun Khandelwal Branch Head as Ex.M1 who also relied on documents Ex.M2 to M15. Both the witnesses of the parties were cross-examined by the learned counsels for the parties.

6. I have heard the parties, gone through the evidence and record of the case. I have also carefully gone through the written arguments filed by the workman.

7. The management has raised objection that applicant Narinder Pal Singh is not workman and this Tribunal has no jurisdiction to adjudicate the present reference. The management referred Section2(s) of the I.D.Act 1947 which reads as under:

“Section 2(s) of the Industrial Disputes Act 1947

(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged on retrenched in connection with, or as consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i)

(ii).....

(iii).....

(iv) who, being employed in a supervisory capacity, draw wages exceeding one thousand six hundred Rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

By the Industrial Disputes (Amendment) Act, 2010, words” one thousand six hundred rupees”, substituted as “ ten thousand rupees”.

8. The management further submitted that workman admittedly drawing Rs. 13250/- and in view of the salary prescribed under the Industrial Disputes (Amendment) Act 2010, the applicant can not be considered as workman. The management referred appointment letter Ex.W2 of the applicant Narinder Pal Singh. In this appointment letter

Narinder Pal Singh was appointed as team leader(Grade S-I) in the home loan department and was drawing Rs. 11500/- monthly remuneration. In this letter it is also mentioned that all other terms and conditions of his employment remain the same. Ex.W4 is the letter whereby his remuneration was increased. In this regard applicant cited Ex.M2 wherein senior team leader in Table 4, the structure in the non-managerial sales cadre at the branch has been shown wherein S-1 team leader to which cadre the applicant belongs shown in non managerial cadre. In this Ex.M2 the management itself shows the applicant in non managerial cadre. The witness of the management MW1 Shri Tarun Khandelwal Branch Head stated in cross-examination that he can not show any document that Narinder Pal Singh has taken any disciplinary action or appointed, promoted any body or has had given leave to any employee. The learned counsel for the workman also relied on 2004(3) SCT page 373 Harish Kumar Gupta Vs. Presiding Officer, Industrial Tribunal Haryana, 2007(2) SLR 158 Anand Regional Co-op Oil Seedgrowers Union Ltd. Vs. Shailesh Kumar Harshadbhai Shah and 1985 SCC(L&S) 808 Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay. In these case laws the Hon'ble Supreme Court and the Hon'ble High Courts have held that for determining whether a particular person is workman or not, it is to be seen what kind of duties he has been assigned and performing. In this regard management's document Ex.M2 itself shows that Grade S-1 and S-2 Team Leader and senior Team Leader were in non-managerial cadre. Besides this, witness of the management MW1 Shri Tarun Khandelwal Branch Head stated in cross-examination that he can not show any document that Narinder Pal Singh has taken any disciplinary action or appointed, promoted any body or has had given leave to any employee. There is nothing on the record to show that applicant was performing supervisory or managerial duties. Therefore, in the facts and circumstances of the case, it is held that the applicant Narinder Pal Singh is a workman as defined under Section 2(s) of the I.D. Act 1947.

9. Now coming to the merits of the case in hand, admittedly the workman Narinder Pal Singh was suspended vide letter dated 9th of March 2010 (Ex.W7). He was charge sheeted vide letter dated 19th of March 2010 (Ex.W8). As per management the workman has not submitted his reply to the charge sheet and vide letter dated 20th of April 2010 (Ex.W11) the workman was dismissed from service. The learned counsel for the workman submitted in arguments that the workman was dismissed from service without holding any enquiry into the charges, therefore, the dismissal of the workman from service is arbitrary, illegal and against the principles of natural justice and against the settled principles of law. Therefore, the workman is entitled to be reinstated in service with full back wages and all other service benefits.

10. On the other hand. The learned counsel for the management submitted that the applicant was issued charge

sheet. No reply has been filed by the workman to the charge sheet. The workman was rightly dismissed from service as serious allegation of corruption was levelled against the workman by one Charan Singh. The workman was dismissed from service as per terms and conditions mentioned in his appointment letter and there was no necessity of conducting of enquiry in the allegations levelled against the workman by one Charan Singh.

11. From the perusal of the record, Ex.W8 is the memo of charges-cum-Show cause notice dated 19.3.2010 which was issued by the management to the workman Narinder Pal Singh Team Leader Ludhiana Branch. The charge No.1 reads as below:

“Charge 1:

You had taken unlawfully Rs. 12,000/- from one applicant of Home Loan. The applicant, Mr. Charan Singh had given the written complaint against you. Please find the Copy of the same attached herewith. This fact is easily established as the same applicant given a letter stating that now there is nothing recoverable from you. The same applicant has acknowledged the fact of taking the money back from you, by stating that now he has nothing to be given or taken from Mr. Narender by him. These words clearly indicate that you have unlawfully taken money from the applicant Mr. Charan Singh and later you returned it to Mr. Charan Singh. The second letter of Mr. Charan Singh has been attached herewith. Further, circumstances indicate that the second letter was written by Mr. Charan Singh only after you have suggested Mr. Charan Singh to do so and returned the money illegally taken from Mr. Charan Singh to avoid any disciplinary / legal action against you.

Thus, aforesaid allegations amount to breach in the Code of Conduct No.13.3 and 13.20 of the Company. The Code of Conduct no.13.3 reads as

“every employee shall discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of him/her or which is likely to tarnish the image of the Company. Cases of fraud and dishonesty will attract penalty of dismissal or suspension from the services.” And the Code of Conduct No.13.20 of the Company reads as, “An employee shall not demand and/or accept and/or offer/give any gift/bribe, in cash or kind, directly or indirectly, from/to any customer/potential customer of the Company for providing any service/facility/ benefit from the Company to such customer/potential customer.”

In this connection, you are requested to submit your written explanation to undersigned at Axis Sales Limited, Corporate Office – 5th Floor, Bombay

Mutual Annexe, Gunbow Street, Off D.N. Road, Fort, Mumbai- 400 001 charge levelled against you on/or before 27th March 2010. It is brought to your notice that in case, if you fail to submit the explanation within the stipulated date it would be deemed that you have nothing to say with respect to the above allegations and the Company shall be at liberty to proceed further and take appropriate disciplinary action in this regard.”

12. As per the contention of the workman he sent his reply to the memo of charges-cum-show cause notice on 26.3.2010 vide speed post. The reply of the charge sheet was to be submitted on or before 27.3.2010. From the perusal of Ex.W11, it appears that the management on the ground that workman failed to submit reply to the charge sheet on or before 27.3.2010, he was dismissed from service with immediate effect vide letter dated 20.4.2010. Workman submitted an application dated 6.5.2010 to review/recall the order of dismissal. This application was also rejected by the management.

13. From the above set of facts it is clear that the workman submitted his reply to the charge sheet through speed post on 26.3.2010. As the reply of the workman did not receive by the management within stipulated period i.e. 27.3.2010, the management proceeded further and passed the dismissal order of the workman. Admittedly no enquiry was held. Workman submitted that the complainant Charan Singh has withdrawn his complaint vide Ex.W6, hence the action taken by the management was unwarranted, unfair and void.

14. The management in this regard submitted that even if it is taken to be correct that Charan Singh has withdrawn his complaint, it was done only on the persuasion of the workman himself and this fact strengthened the complaint of Charan Singh.

15. Therefore, in the present facts and circumstances of the case, the management was under obligation to conduct full fledged enquiry to the charge sheet issued by the management and the workman should have been provided full opportunity to place his defence in the enquiry. It is also revealed from the record that the management witness MW1 Shri Tarun Khandelwal in his affidavit mentioned that “as the applicant/claimant indulged in unethical practice of taking money from the customer, hence the company/management has lost confidence upon applicant/claimant.”

16. Considering all the facts and circumstances of the case, as no enquiry was conducted against the workman into the charges levelled against him and he was not provided opportunity of defence, therefore, the order of dismissal is not tenable and same is set aside with a liberty to the management to conduct a fair and proper enquiry into the charges levelled against the workman.

17. Insofar as the back wages are concerned, there was serious complaint of taking money from the customer and it was incumbent upon the management to hold enquiry. But the management has not held any enquiry into the charges levelled against the workman. In this regard, the workman cited 1979(3) SLR 296 Hari Palace Ambala City Vs. The presiding officer, Labour Court, Rohtak and another and 2001(1) SCT 296 Ram Surat Vs. Presiding officer, Labour Court, Ludhiana. With utmost respect to the case laws cited above, the facts and circumstances of the case in hand are quite different from the facts and circumstances of the case laws cited, therefore, are not applicable on the facts and circumstance of the case in hand.

18. In view of the above, the management is directed to reinstate the workman within one month from the publication of this award but without back wages. It is made clear that the management would be at liberty to hold full fledged enquiry as per rules following the principles of natural justice into the charges levelled against the workman.

19. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
14.01.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 478.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 40/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/03/2016 को प्राप्त हुआ था।

[सं. एल-41011/109/2010-आईआर (बी-1)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 9th March, 2016

S.O. 478.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the management of the Northern Railway and their workmen, received by the Central Government on 09/03/2016.

[No. L-41011/109/2010-IR (B-I)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT :**

RAKESH KUMAR, Presiding Officer

I.D. No. 40/2011

Ref. No. L-41011/109/2010-IR(B-I) dated: 14.03.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO – Manak Nagar
Lucknow-16

(Espousing cause of Sri Iqbal Ali)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow

AWARD

1. By order No. L-41011/109/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora (Premwati Nagar), PO – Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

WHETHER THE DEMAND OF THE UNION REGARDING PLACING SHRI IQBAL ALI/S/O SHRI SHAMSHAD ALI, ASSISTANT LOCO PILOT, LOCO-SHED, LUCKNOW IN THE PANEL OF 1983-84 ABOVE HIS JUNIORS AND GRANT OF PAY BENEFITS ACCORDINGLY IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE UNION IS ENTITLED?"

3. The case of the workman's union, in brief, is that the workman was appointed as cleaner w.e.f. 10.11.1975 and worked as such till 03.09.1981 continuously, when he had been retrenched w.e.f. 04.09.1981 illegally. The workman challenged his retrenchment before CGIT-cum-Labour Court, Kanpur in I.D. No. 48/83 and 163/1983 and the Tribunal was pleased to reinstate the workman with back wages from the date of retrenchment vide their award dated 19.02.1987 and 25.11.1985. The management challenged

the award of CGIT, Kanpur before Hon'ble High Court, which was rejected; likewise the SLP too before Hon'ble Apex Court was rejected; accordingly, the workman was reinstated on 03.08.1983. It is alleged that the management vide its order No. 220 E/1-5/Screening/ Loco dated 30.08.1991 regularized the workman on the post of Loco Cleaner; whereas it absorbed other junior workmen in the panel for the year 1983-84 on the basis of 120 days working up to 30.09.1998, which is in violation to the provisions of Railway Rules. It is submitted by the workman's union that Shri Amarjeet Singh & Sri Abdul Aziz were also included in the panel for year 1992 but later on included in the panel of year 1983-84 on the orders of Hon'ble CAT, Lucknow. Likewise, other workmen viz. Sri Pratap Bahadur & Ahmad Ali, who were earlier included in panel for the year 1992 were included in the panel for year 83-84 as per order of this Tribunal. Accordingly, the workman's union has prayed that the name of the workman, be included in the panel of the year 83-84 with consequential benefits.

4. The management of the railways has filed its written statement, denying the claim of the workman's union and has contended that the workman's union has sought the relief placing the name of the workman in the panel of year 1983-84, which is not permissible because of the seniority of other employees will be effected and they are not arrayed as party in present industrial dispute and if the relief is granted, several other workers may prefer the matter in courts since their seniority shall be affected. The management has specifically submitted that the industrial dispute has been referred after lapse of more than 25 years without any rhyme or reason or any sufficient explanation; and accordingly, the same is liable to be rejected on the point of limitation.

5. The workman's union has filed its rejoinder wherein apart from reiterating facts already mentioned in the statement claim has submitted that there is no limitation provided in the industrial disputes Act, 1947.

6. The parties filed documentary as well as oral evidence in support of their respective case and forwarded oral arguments.

7. Heard learned authorized representatives of the parties at length and perused entire evidence on record.

9. The authorized representative of the workman has contended that since the termination dated 04.09.81 has been held illegal and the workman had been reinstated with consequential benefits, therefore he is entitled for inclusion in the panel of year 1983-1984. He has relied upon:

- (i) N. Balakrishnan vs. M. Krishnamurthy 1998 ACJ 1347.

10. In rebuttal, the authorized representative of the management has contended that the workman was screened and rightly placed in the seniority panel vide order dated 30.08.1991. The management has vehemently contended that the workman is not entitled to be included in the panel for the year 1983-84, inasmuch as the present industrial dispute is time barred and the workman has raised this industrial dispute when he found that some other workmen got benefit from different Court/Tribunals. The management has relied on:

- (i) *M. Ramakotiah & others vs. Union of India & others* 2007 (6) AWC 6556 (SC).

11. I have given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and scanned the entire evidence available on record.

12. Admittedly, the workman had been terminated w.e.f. 04.09.1981 and his termination had been declared to be illegal and was reinstated with back wages by the CGIT-cum-Labour Court, Kanpur. Also, the Hon'ble High Court in writ petition, filed by the management of railways, upheld the award regarding reinstatement and the management in compliance of award reinstated the workman and paid him back wages. However, the management's contention over the issue referred to this Tribunal is, that the workman was screened and was rightly placed in the seniority panel for 1991 and he is not entitled for inclusion in the panel for year 1983 as he was not in service at that point of time; more so because the present industrial dispute has been raised after lapse of more than 25 years. Moreover, it has come in the evidence of the workman that he has also taken voluntary retirement on 18.02.2013.

13. Thus, the question to be adjudicated is as to whether the workman is entitled to be included in the seniority panel of 83-84, which was denied to him, consequent upon his termination in the said year? It is admitted fact that the workman was not in service due to illegal termination in the relevant year 1983, when the seniority panel was drawn and his name was not considered. The termination of the workman was quashed by the CGIT-cum-Labour Court, Kanpur and in compliance thereof the management reinstated the workman, treating the termination as non-est and paid back wages in compliance of the order of the Hon'ble High Court.

As per award of the CGIT-cum-Labour Court, Kanpur, the reinstatement order was not qualified one to be given effect to the extent of monetary benefits only. As per settled procedure, logically and legally reinstatement required grant of all service benefits including seniority as if the termination had not taken place. The management complied with the order of reinstatement without giving seniority and released monetary benefits to the workman. On the quashing of termination order, it has to be assumed that

the workman was never been terminated and continued to be in service notionally. The effect of the reinstatement is that the workman would be deemed in service on the last post held on the date of termination. Accordingly, he is entitled for preference over his juniors and to be included in the seniority panel for the year 1983-1984.

14. The management of the railways has come up with a contention that the present industrial dispute is time barred as it has been raised after lapse of more than 25 years. The workman's witness during his cross-examination stated that he moved an application before DRM; but has not filed its copy before this Tribunal. He further, stated that when the management did not act upon his repeated representations, then he raised the present industrial dispute. The authorized representative has contended that the workman has not given any reliable explanation for inordinate delay of 25 years; rather he turned up when the other got successful. He stressed that the order of the Hon'ble CAT, Lucknow Bench, Lucknow in respect of Amarjeet Singh was delivered on 26.04.1993; but the workman has raised present industrial dispute in 2011, without any explanation.

15. The management has relied upon *N. Balakrishnan vs M. Krishnamurthy* 1998 ACJ 1347; wherein Hon'ble Apex Court while dealing with the matter of delay has observed that length of delay does not matter, acceptability of the explanation is the only criterion.

In *Chennai Metropolitan Water Supply and Sewerage Board & others vs T.T. Murali Babu* 2014 (141) FLR 772, Honble Apex Court has observed as under:

"The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring a hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification."

Further, in Dr. Jawahar Lal Rohatgi Memorial Eye Hospital vs State of U.P. & others 2013 (138) FLR 11 Hon'ble Allahabad High Court upholding the action of the State Government in denying the making reference of case after 22 years held that it is not expedient for State Government to refer against order of termination dated 26.6.1982 being old and stale case, where the workman filed an application raising industrial dispute after 22 years in 2004. Hon'ble High Court observed that there is nothing to indicate as to why the workman could not approach the authority under the ID Act. On the issue of delay the workman has tried to explain his delay by pleading that he kept on making representations before the authorities; but in the absence of any copy thereof his contention cannot be relied upon. There is no other explanation about delay.

Thus, from the face of record it is crystal clear that the workman did not bother to approach the management or any legal forum for redressal of his grievances for more than 20 years; and he approached this Tribunal when he come to know about favourable order of courts in similar nature of cases, which points out towards opportunism of the workman. Moreover, the explanation forwarded by the workman's union before this Tribunal is insufficient.

16. In the present case, admittedly there is delay of approximately 20 years as he was screened vide order dated 30.08.1991. The workman's union failed to give any logical explanation for this inordinate delay of 20 years. Hon'ble Apex Court in Ajaib Singh vs. Sirhind Co-operative Marketing-cum-Processing Services Society Ltd. & another 1999 LAB IC 1435 where there was admitted delay of seven years has held that the Court can mould relief by refusing back wages or directing payment of part of back wages.

17. Thus, from the facts and circumstances of the case and the case laws cited hereinabove, I am of considered opinion that the action of the management of Railway in not including the name of the workman in the panel for year 83-84 was illegal and unjustified. Accordingly, I come to the conclusion that the workman is entitled for placement in the panel of 1983-1984 above his juniors, subject to his suitability under Rules. He shall be entitled to services benefits under Rules; however, he would be liable for payment of only 1/3rd of back wages, in view of delay in raising the present industrial dispute.

18. The reference under adjudication is answered accordingly.

19. Award as above.

LUCKNOW

18th January, 2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 9 मार्च, 2016

का.आ. 479.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ सं. 84/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/03/2016 को प्राप्त हुआ था।

[सं. एल-12012/37/2005-आईआर (बी-1)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 9th March, 2016

S.O. 479.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 09/03/2016.

[No. L-12012/37/2005-IR (B-I)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer
CGIT-cum-Labour Court,
Ahmedabad,
Dated 11th January, 2016

Reference: (CGITA) No. 84/2005

1. The Assistant General Manager,
State Bank of India,
1st Floor, Paradise Complex,
Sayajiganj
Baroda

...First Party

Vs.

Their Workman
Sh. Mayur Jambubhai Shah,
C/o. Narsinhji Ni Pole,
Opp. PurshottamNivas,
Mandvi,
Vadodara (Gujarat)

...Second Party

For the First Party : -

For the Second Party : -

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-12012/37/2005-IR(B-I) dated 13.09.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India, Service Branch, Baroda through the Assistant General Manager, Baroda removing the services of Sh. Mayur Jambubhai Shah with superannuation benefits i.e. pension and/or provident fund and gratuity is legal, proper and justified? If not, to what relief the concerned workman Sh. Mayur Jamubhai Sha is entitled to and from which

date and what other directions are necessary in the matter?”

2. This reference dates back to 13.09.2005. First party filed the vakilpatra (Ext.3) on 03.01.2006 of his advocate Sh. B.K. Oza. Second party filed statement of claim (Ext.4). First party filed the written statement on 17.08.2008 again Sh. B.K. Oza filed the vakilpartra(Ext.13) on 08.01.2014 but second party did not come forward to lead evidence despite giving number of opportunities to him.Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer